



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Set Public Hearing to Consider the Appeals of Browman Development Company and Wal-Mart Stores, Inc. Regarding the Decision of the Planning Commission to Not Certify the Lodi Shopping Center Environmental Impact Report

MEETING DATE: November 5, 2008

PREPARED BY: Randi Johl, City Clerk

RECOMMENDED ACTION: Set public hearing for either November 19, 2008 (regularly scheduled meeting), or November 20, 2008 (special meeting), to consider the appeals filed by Browman Development Company and Wal-Mart Stores, Inc. regarding the decision of the Planning Commission to not certify the Lodi Shopping Center Environmental Impact Report.

BACKGROUND INFORMATION: Pursuant to Lodi Municipal Code Chapter 17.88 and Section 17.22.110, Browman Development Company and Wal-Mart Stores, Inc. filed appeals regarding the decision of the Planning Commission on October 8, 2008, to not certify the Lodi Shopping Center Environmental Impact Report. The appeals were filed in a timely manner and the appropriate fee was paid. The City Council may now set the matter for a public hearing to consider the appeals. It is suggested that the matter may be heard at the regularly scheduled meeting of November 19, 2008, at 7:00 p.m. or at special meeting on November 20, 2008, at 6:00 p.m. If the matter is heard on November 19, 2008, staff will attempt to limit the number of items for Council consideration, but there will be other non-related items for action on the agenda. If the matter is heard on November 20, 2008, the appeals will be the only item for consideration on the agenda.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.

A handwritten signature of Randi Johl, City Clerk, in blue ink.

Randi Johl, City Clerk

RJ/jmp

Attachments:

1. Agenda for the October 8, 2008, Planning Commission meeting
2. Staff Report for the Lodi Shopping Center EIR considered at the October 8, 2008, Planning Commission meeting
3. Draft minutes for the October 8, 2008, Planning Commission meeting

APPROVED:

A handwritten signature of Blair King, City Manager, in blue ink.

Blair King, City Manager

<p>CARNEGIE FORUM 305 WEST PINE STREET LODI, CALIFORNIA</p>	<p>AGENDA LODI PLANNING COMMISSION</p>	<p>REGULAR SESSION WEDNESDAY, OCTOBER 8, 2008 @ 7:00 PM</p>
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For information regarding this agenda please contact:

Kari Chadwick @ (209) 333-6711
Community Development Secretary

***NOTE:** All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the Community Development Department, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the Community Development Department as soon as possible and at least 24 hours prior to the meeting date.*

1. ROLL CALL

2. MINUTES – “September 10, 2008”

3. PUBLIC HEARINGS

- a. The request of Browman Development Company and Wal-Mart Real Estate Business Trust to certify the Final Revised Environmental Impact Report (EIR-03-01) to allow construction of the Lodi Shopping Center and allow all subsequent development approvals for the center; and

Request of Browman Development Company and Wal-Mart Real Estate Business Trust to approve Use Permit U-02-12 to allow the construction of a commercial center in a C-S, Commercial Shopping District, and allow the sale of alcoholic beverages at the Wal-Mart Supercenter; and

Consider approval of Vesting Tentative Map 03-P-001 to create 12 parcels for the project.

Request of Browman Development Company and Wal-Mart Real Estate Business Trust for site plan and architectural approval of a new retail building to be constructed at 1600 Westgate Drive.

NOTE: The above item is a quasi-judicial hearing and requires disclosure of ex parte communications as set forth in Resolution No. 2006-31

4. PLANNING MATTERS/FOLLOW-UP ITEMS

5. ANNOUNCEMENTS AND CORRESPONDENCE

6. ACTIONS OF THE CITY COUNCIL

- a. Summary Memo Attached

7. GENERAL PLAN UPDATE/DEVELOPMENT CODE UPDATE

8. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE

9. ART IN PUBLIC PLACES

10. COMMENTS BY THE PUBLIC

11. COMMENTS BY THE PLANNING COMMISSIONERS & STAFF

12. ADJOURNMENT

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

***NOTICE: Pursuant to Government Code §54954.3(a), public comments may be directed to the legislative body concerning any item contained on the agenda for this meeting before (in the case of a Closed Session item) or during consideration of the item.*

Right of Appeal:

If you disagree with the decision of the commission, you have a right of appeal. Only persons who participated in the review process by submitting written or oral testimony, or by attending the public hearing, may appeal.

Pursuant to Lodi Municipal Code Section 17.72.110, actions of the Planning Commission may be appealed to the City Council by filing, within ten (10) business days, a written appeal with the City Clerk and payment of \$300.00 appeal fee. The appeal shall be processed in accordance with Chapter 17.88, Appeals, of the Lodi Municipal Code. Contact: City Clerk, City Hall 2nd Floor, 221 West Pine Street, Lodi, California 95240 – Phone: (209) 333-6702.

**LODI
PLANNING COMMISSION
Staff Report**

MEETING DATE: October 8, 2008

APPLICATION NO: Final Revised Environmental Impact Report (EIR-03-01)
Use Permit U-02-12,
Vesting Tentative Map 03-P-001
Site Plan and Architectural Review 08-SP-08

REQUEST: The request of Browman Development Company to certify the Final Revised Environmental Impact Report (EIR-03-01) to allow construction of the Lodi Shopping Center and allow all subsequent development approvals for the center. Additionally, to approve Use Permit U-02-12 to allow the construction of a commercial center in a C-S, Commercial Shopping District, and allow the sale of alcoholic beverages at the Wal-Mart Supercenter and Vesting Tentative Map 03-P-001 to create 12 parcels for the project. Finally, to approve the SPARC application concerning the Wal-Mart building.

LOCATION: 2640 West Kettleman Lane. Approximately 40 acres located at the southwest corner of west Kettleman Lane/State Route 12 and Lower Sacramento Road in west Lodi.

APPLICANT: Browman Development Company
100 Swan Way, Suite 206
Oakland, CA 94621

PROPERTY OWNER: Browman Development Company & Wal-Mart Real Estate
100 Swan Way, Suite 206 Business Trust
Oakland, CA 94621 Mail Stop 0555
Bentonville, AR 72716-0555

RECOMMENDATION: Staff recommends that the Planning Commission certify the Final Revised Environmental Impact Report (FREIR) for the Lodi Shopping Center project and that the Planning Commission approve the Use Permit, Vesting Tentative Map, and SPARC requests subject to the conditions listed in the Draft Resolutions as attached.

PROJECT/AREA DESCRIPTION

General Plan Designation: NCC, Neighborhood / Community Commercial.

Zoning Designation: C-S, Commercial Shopping District.

Property Size: Approximately 40 acres, 36 acres for the shopping center development and 4 acres adjacent and southwest of the shopping center site for construction of a stormwater detention drain.

Adjacent General Plan, Zoning and Land Use:

North (across W. Kettleman Ln): General Plan; NCC, Neighborhood Community Commercial

Zoning; C-S, Commercial Shopping Center
Land Use; The Vintner's Square Shopping Center anchored by the
Lowe's Home Improvement store

South:

General Plan; LDR, Low Density Residential
Zoning; PD, Planned Development
Land Use; Currently Agricultural planted as a vineyard, but
planned as the Southwest Gateway planned residential
community

West:

General Plan; PQP, Public/Quasi Public & HDR, High Density
Residential
Zoning; PUB, Public & PD, Planned Development
Land Use; Currently agricultural, but planned for a utility substation
and higher density residential as part of the Southwest
Gateway planned residential community

East (across Lower Sacramento Rd.):

General Plan; NCC, Neighborhood Community Commercial
Zoning; C-S, Commercial Shopping Center
Land Use; The Sunwest Plaza Shopping Center currently anchored
by the existing Wal-Mart, J.C. Penny and the Food 4
Less Grocery Store.

BACKGROUND:

The original Final Environmental Impact Report and the associated Lodi Shopping Center project came to the Planning Commission on December 8, 2004. At the conclusion of that meeting the Planning Commission certified the Final Environmental Impact Report (FEIR) and approved a Use Permit to allow the construction of the Lodi Shopping Center, the sale of alcoholic beverages at the Wal-Mart Supercenter and a Tentative Map to create 12 parcels.

Two appeals were filed concerning the Planning Commission's certification of the FEIR and approval of the project. The first appeal was filed by the law firm of Herum, Crabtree and Brown on behalf of Lodi First, an unincorporated association of Lodi residents, voters, property owners, and taxpayers. This appeal found fault with the FEIR. Lodi First claimed that the project was not consistent with the City's General Plan or Zoning Code and challenged the FEIR as inadequate. The second appeal was filed by the law firm of Steefel Levitt and Weiss on behalf of Wal-Mart. Wal-Mart's appeal was limited to two conditions imposed by the Planning Commission: 1) a condition requiring signed leases for at least 50% of the existing Wal-Mart building before a building permit could be issued for the Supercenter; and 2) a condition requiring the project developer to pay for a linkage study based upon the Housing Element and pay any fees based on the conclusion of the study.

The City Council considered the appeals. On February 3, 2005 the City Council certified the FEIR for the Lodi Shopping Center project. On February 16, 2005 the City Council approved the Use Permit for the construction of the Lodi Shopping Center, allowed the sale of alcoholic beverages at the Wal-Mart Supercenter, and approved the Tentative Map to create 12 parcels. The Council added to the Planning Commission's condition regarding the existing Wal-Mart building by allowing various options and expansions. The Council expanded the requirement that prior to the issuance of a building permit for the Supercenter at least 50% of the existing Wal-Mart building square footage be leased, with said leases including a minimum two-thirds of the building frontage. Two additional options were added to allow issuance of a building permit for the Supercenter if the existing building had a fully executed purchase agreement with a bona-fide retailer, or if the applicant presented a cash escrow for the purpose of demolishing the existing Wal-Mart building not later than 90 days after the opening of the Supercenter. A

new alternate condition was also added to allow Wal-Mart to be issued a building permit for the Supercenter if prior to the issuance of the Use Permit, Wal-Mart sold the existing building to a non Wal-Mart entity. The appealed condition regarding a Housing Element linkage study was retained but the developer is to receive credit for the amount paid against the final fee as adopted by the Council.

The City Council approval of the Lodi Shopping Center was challenged in court on environmental grounds. On December 19, 2005, the Superior Court of California, San Joaquin County, Stockton Branch found the EIR to be deficient with respect to cumulative urban impacts and energy impacts. The Court directed the City to void all City approvals for this project pending correction of the differences in the FEIR. On February 10, 2006 the Court ordered the City to vacate approval of the following Planning Commission and City Council resolutions approving the project:

- a) Planning Commission Resolution PC 04-64 certifying the EIR 03-01 adopted on December 8, 2004;
- b) Planning Commission Resolution PC 04-65 approving Use Permit U-02-12 and Tentative Parcel Map 03-P-001 adopted on December 8, 2004;
- c) City Council Resolution 2005-26 certifying the EIR 03-01 adopted on February 3, 2005; and
- d) City Council Resolution 2005-38 approving Use Permit U-02-12 and Tentative Parcel Map 03-P-001 adopted on February 16, 2005.

On May 3, 2006, the City Council adopted Resolution 2006-81 rescinding the above listed Planning Commission and City Council Resolutions relating to the Lodi Shopping Center. The City Council also adopted Resolution 2006-82 authorizing agreements with two consulting firms to prepare revisions to the Lodi Shopping Center EIR that was found deficient by the Superior Court.

PROJECT DESCRIPTION:

Revisions to the Lodi Shopping Center:

In the case of Lodi First v. City of Lodi, San Joaquin Superior Court Case No. CV025999 ("Lodi First"), the Court ordered revisions to the discussions of cumulative urban decay impacts and energy impacts. In all other respects, the Court found the EIR to be legally sufficient under CEQA. The City of Lodi decided to make revisions to three additional areas of the EIR. These are: the statement of project objectives, the discussion of agricultural resources, and the discussion of project alternatives. These areas of additional analysis were the subject of a lawsuit entitled Citizens for Open Government v. City of Lodi, San Joaquin Superior Court Case No. CV026002 ("C.O.G."). The C.O.G. case was resolved after the court's decision in Lodi First by a stipulated order of dismissal, preserving to the C.O.G. plaintiffs the right to continue to assert certain previously made claims as to the adequacy of the environmental analysis. The Revised EIR document includes only the above five (5) sections which were subject to revision or augmentation. Since the remainder of the original EIR is not subject to further review, it is staff's recommendation that the Planning Commission recertify the original EIR, as amended by the Revisions to the EIR document to cure the deficiencies identified by the Court.

The Revisions to the EIR are subject to the full administrative and public review. A Notice of Preparation (NOP) was prepared describing the legal context, a project description and a brief overview of the topics to be covered in the Revisions document. The NOP was made available to the State Clearinghouse in the office of Planning and Research for State agencies and was sent to non-state agencies and was posted and made available to the public to solicit input on the five (5) issues of concern that would be addressed in the FREIR. After a period of analysis and formulation, the DREIR was prepared. The City filed a Notice of Completion (NOC) with the State Clearinghouse and posted, published, and distributed the Notice of Availability of the DREIR. This began the public and agency review period for the

document. The length of the public review period was 52 days. During the review period, the Planning Commission held a public hearing on November 14, 2007, to receive oral and written comments on the DREIR. The City prepared formal written responses to all the comments received as well as an addendum section indicating further revisions made to the document. The revisions, comments received, and responses constitute the FREIR for the Lodi Shopping Center Project and are presented for certification.

Summary of Specific Impacts and Their Mitigations:

The revisions to the EIR re-analyzed the potential for urban decay due to cumulative economic effects of competing retail projects. The REIR looked at region-wide effects of Wal-Mart Supercenters in other cities and the effects of the Reynolds Ranch commercial area. The analysis found that existing retail centers in Lodi would be subject to a reduction in sales and it is possible that one or more business closures could result and the affected properties could be subject to long-term vacancies under cumulative conditions. However, such closures and vacancies though possible were not reasonably foreseeable and if closures and long-term vacancies were to occur, they would not result in total neglect or abandonment which could lead to urban decay or physical deterioration. No urban decay or physical deterioration is foreseen to occur and that is the test for an EIR impact, therefore no impacts were identified and no mitigation measures are proposed. Nonetheless, the City has committed to aggressive code enforcement measures to ensure the abatement of any nuisance within the City and to prevent the physical deterioration of communities. In this vein, in August of 2008, the City added another member to its Community Improvement Division by hiring a new Supervising Community Improvement Officer.

The REIR analyzed the Reynolds Ranch project at approximately 640,000 square feet. As a result of the City Council's most recent approval of the Reynolds Ranch project at 750,000 square feet, the City has had the economic consultant review the potential impacts of the additional area. The memorandum from BAE is included as an attachment to this staff report. In summary, the conclusion is that "This review process has shown that even if BAE had assumed that Reynolds Ranch was to be developed with 750,000 square feet of retail space when preparing the October 2007 analysis, the conclusions and findings would not have been significantly different than they are at present". Thus, the additional space does not change the impact conclusions of the REIR. Additionally, the recent Reynolds Ranch EIR Addendum, which analyzed the impacts of the larger project, did not find any additional economic or urban decay impacts as a result of the increased project size.

The revisions to the EIR also addressed energy impacts. The analysis found no significant energy consumption impacts or impacts on energy supplies and infrastructure; therefore, no mitigation measures are proposed. The original EIR found an impact from the conversions of approximately 40 acres of prime agricultural use to urban uses, a significant and unavoidable impact. The FREIR confirms the significant and unavoidable impact on agricultural resources but adds a partial mitigation of requiring the project to obtain permanent agricultural conservation easements over 40 acres of prime farmland within 15 miles of the site. The remaining revisions to the EIR modified the project objectives and changed the alternative project location that was analyzed. The original alternative location was the Reynolds Ranch project site. As this site is subject to an active development application, a new site at the northeast quadrant of Highway 12 and Thornton Road was evaluated.

The above sections were the focus of the revisions to the EIR for the Lodi Shopping Center and modified impacts, mitigations, findings and statements of overriding considerations have been prepared as is included in the proposed resolution of certification.

Use Permit and Tentative Map Analysis:

Approximately 17 years ago, the City's General Plan designated the southwest corner of West Kettleman Lane/State Route 12 and Sacramento Road for the construction of large-scale retail development. Since

that time, the centers on the other three corners have built out as envisioned. Major national retailers such as Wal-Mart, J. C. Penney, Target, and Lowe's have occupied these corners. The Lodi Shopping Center is proposed on the remaining fourth corner to be anchored by a Wal-Mart Supercenter. This type and scale of development is consistent with the activity that has occurred at the other corners.

The City's Zoning Code requires that all plot plans for projects within the C-S, Commercial Shopping District receive Planning Commission approval. Over time, this review has been done through the Use Permit process. The Zoning Code also requires use permit approval for the sale of alcoholic beverages. The applicant is requesting a Use Permit and a Vesting Tentative Map in order to divide the property into 12 lots that will correspond to the number of buildings anticipated for the project.


The proposed project includes the construction of approximately 339,966 square feet of commercial retail uses, representing a variety of retail sales and services, to be contained in 12 buildings of varying sizes. The primary uses will be a Wal-Mart Supercenter which will occupy approximately 216,710 square feet of floor area, including approximately 70,000 square feet for grocery sales, 19,889 square feet for a garden center (including outdoor fenced area), and 6,437 square feet for an auto service shop. The Wal-Mart Supercenter will not include the use of outdoor metal storage containers, and will not include a seasonal sales area in the parking lot.

A moderate sized retailer will occupy approximately 35,000 square feet on pad 12 in the southeast corner of the site. The remaining 11 buildings will range in size from 3,200 square feet to 14,788 square feet. Three of the 11 buildings will be occupied by fast food franchises, with another two buildings consisting of sit-down restaurants, and the remaining buildings occupied by such retail uses such as financial services/bank, professional/business services, and other retail sales and services.

As noted previously, additional environmental and related economic analysis has been undertaken. However, the uses and layout and design of the shopping center has remained the same as that presented to and approved by the Planning Commission in December, 2004. The Wal-Mart building is located at the southwestern corner of the site, with 11 freestanding buildings located along Kettleman Lane and Lower Sacramento Road to the north and east. In the center of the shopping center is the main parking lot. The proposed vesting tentative map includes the Wal-Mart store and all corresponding parking in the largest lot (lot 12, 18.3 acres), with each of the remaining 11 buildings on their own lot with associated parking. These other lots are generally 1± acre in size, with the smallest (lot 8) being 0.53 AC and the largest (lot 11) being 2.6 AC. Internal travel lanes, parking medians and planters are located through-out the interior. Access to the Center is mainly from Westgate Drive and Lower Sacramento Road, with right turn in and out only from Kettleman Lane. As shown on the site plan, significant public improvements are required in order to build this project, as detailed in the draft conditions in the accompanying resolution of approval. The applicant will be responsible for the construction of Westgate Drive from Kettleman Lane to the southerly project boundary as well as the frontage improvements on Kettleman Lane and Lower Sacramento Road. The applicant is also responsible for the approximately 4 acre site across Westgate Drive to be used for storm water detention, all associated project right-of-way dedications, utility easements, engineering reports and studies, and fees. An encroachment permit from CalTrans for Kettleman Lane / State Route 12 will be needed.

Additional conditions in the draft Resolution cover fire safety, outdoor storage or display of merchandise, shopping cart storage and security, exterior lighting, and a city information/welcome sign. Consistent with the prior approval by the City Council, conditions relative to re-use of the existing Wal-Mart building are proposed. Prior to the issuance of a building permit for the Supercenter, one of the following with respect to the existing Wal-Mart building shall occur: signed leases with a retailer(s) for at least 50% of the building square footage covering two-thirds of the building frontage; or a fully executed purchase agreement for the building with a retailer; or a cash escrow account in the amount to demolish the

building plus \$100,000. This escrow account shall be used by the City to demolish the existing building if the first two options have not been satisfied within 90 days after the opening date of the Supercenter. A condition is also proposed that the developer pay for a linkage study required under program 11 of the Housing Element "...a nexus study to determine whether a direct connection exists between non-residential development in Lodi that creates jobs and the need for housing affordable to lower-income workers who will fill some of those jobs." Also as in the prior City Council approval, a condition is included to incorporate all mitigation measures as specified in the FREIR.

As documented in the FREIR,  EQA environmental impact as to urban decay or physical deterioration from the Lodi Shopping Center cannot be made. The Planning Commission can, however, make a policy decision that the economic effects of the Center on the Downtown can be addressed. To this end, staff is proposing a condition to require the Lodi Shopping Center to invest money in Downtown or in the alternative, to pay a fee of \$2.00 per square foot of the gross floor area of the Supercenter to the City for Downtown investment.

The Use Permit will allow the sale of alcoholic beverages at the Supercenter. No Use Permit for alcohol for any of the freestanding buildings has been applied for or is under consideration. The tenants of these freestanding buildings are not known to staff and have not been included in this request. Any such request in the future would require a Planning Commission Hearing at that time when the specific details of the requesting business are known. The Planning Commission has previously found that the sale of alcoholic beverages is incidental to a grocery store operation and that is what is being requested by the Wal-Mart Supercenter. Staff recommends approval of this Use Permit and has included appropriate conditions in the draft resolution.

As previously discussed in the analysis, a vesting tentative map approval is requested to divide the site into 12 lots. Staff recommends approval of this action and has included vesting tentative map conditions in the draft resolution.

SPARC Review:

Along with the plot plan and tentative map for the Lodi Shopping Center, preliminary elevations and colors for the Wal-Mart Supercenter have been submitted. No elevations or colors, landscaping plan, signage plan, materials, or other final plans for the rest of the Center or buildings have been submitted. This shopping center is subject to the City's Design Standards for Large Retail Establishments. The overall site layout, building footprints, parking areas, and access driveways provide the overall direction of the Center and were used by staff and the Planning Commission in the December 8, 2004 review to determine that this project complies with the Design Standards for Large Retail Establishments. As such, no further designs, layout, or changes have been proposed.

The proposed project includes the construction of a new Wal-Mart Supercenter store with a building size of approximately 216,710 square feet. The Wal-Mart building would be located on the southwestern portion of the project site, and the building entrance would face east toward Lower Sacramento Road. The Wal-Mart Supercenter building is a single story structure. The architectural theme of the building is a contemporary style and uses construction materials commonly used in commercial shopping center construction. Architectural materials such as concrete masonry block, metal awnings, and exterior plaster finish will be utilized on the exterior of the building. The major materials used for architectural treatment include fawn (brown) colored stucco, fawn (brown) cultured stone veneer, split face (light brown) block, sea-green colored smooth finish metal panels, charcoal roofing material, hallow (gunmetal gray) metal doors and cornices, and black fencing. The body of the building will be in shades of brown. The ground level will have fawn (brown) colored stucco walls with fawn colored stone veneer accent walls near key entrances and along the lower eight feet of the exterior wall. The architectural treatment features are mostly used on the north and east elevation. Also on the main entrance, a canopy type

architectural feature is proposed. The proposed main entry canopy will be clad with a brown cultured stone finish.

The west and south elevations do not feature the same detailed architectural treatment. The west (rear) elevation is a continuous wall with little architectural treatment to breakup the elevation of the building. The entire west elevation will have fawn (brown) colored stucco walls with metal doors painted to match the stucco. Cornices and accent trims are provided to break up the wall elevation. The ground level will also have cultured veneer stone elements. The midsection of the western elevation should receive further architectural treatment to add architectural interest to the wall. It is important to note that this elevation will be visible from across Westgate Drive. A condition of approval is included in the SPARC Resolution regarding additional architectural treatment for the west elevation.

The southern elevation will feature nearly identical architectural treatment as the west elevation. However, the proposed southern elevation is less of an issue. First, there will be an 8-foot tall masonry wall on the southern property line to block any view of this elevation from the project to the south. Second, unlike the western elevation, the southern elevation is not a continuous large mass elevation. Because the main axis of the building faces west (the longest elevation), the south elevation is the side of the building and is relatively small in size in comparison.

Circulation and Parking

The site plan indicates six access points to three public streets. There will be three entrances/exits from Lower Sacramento Road, one from Kettleman Lane (HWY 12), and two from Westgate Drive. All three streets will have a raised center median that will restrict turning movements in some degree. The main entrance to the project parking lot is from Lower Sacramento Road and will be located near the middle of the project site. This entrance will have a traffic signal to control traffic flow and will allow both entering and exiting traffic to turn in both directions. The other access points from Lower Sacramento Road will be restricted to right turn in and right turn out movements. The direct driveway entrance from Kettleman Lane (HWY 12) will only permit a right-turn in and right-turn out traffic movement. Traffic can also access the shopping center from Kettleman Lane by way of Westgate Drive. This intersection is controlled by an existing traffic signal that will allow both right and left turning movements. The main (northern) access point from Westgate Drive will allow both right and left hand tuning movements. The southern access point will only allow right in, right out movements. Circulation to and from the site is very similar to the Vintners Square Center (Lowes) to the north.

The main parking lot is located on the east side of the Wal-Mart building. There will be smaller parking areas to serve the free-standing commercial pads. For the Wal-Mart building, a total of 965 parking spaces are proposed (4.45/1000). A total of 434 parking spaces are required, per City code (General Retail 1/500). The proposed number of parking stalls exceeds the minimum parking requirements.

There are 12 cart corrals proposed to be distributed throughout the parking lot. These cart corrals will be screened in brown CMU wall with wooden frames to provide additional ornamentation.

Landscaping and Signage

The proposed landscape plan calls for various large shade trees, smaller trees, shrubs and ground covers. A total of 478 larger shade trees will be provided within the parking lot interior, along the southern and western edges the property line, and throughout the site. This total number of trees exceeds what the City code requires.

The approval of project signage is not a part of the current review and would be subject to City of Lodi codes and requirements to ensure they complement the building architecture and landscaping of the building. Signage applications and approvals would be done separately, should the project be approved.

PUBLIC HEARING NOTICE:

Notice for the FREIR was published on September 27, 2008 in the Lodi New Sentinel. The item was posted at City Hall, on the City's website, and at the City of Lodi Library on September 26, 2008. 175 public hearing notices were sent out through the combination of the U.S. Postal Service and electronic mail which included all property owners of record within a 300-foot radius of the subject property as required by Government Code section 65091(a)3. Everyone who made a comment on the Draft Revisions to the EIR was sent a copy of the response to their comment, revisions to the EIR and notice of the public hearing at least 10 days before the hearing. Legal notice for the use permit and vesting tentative map consideration was given at the same time and manner as the notice for the FREIR.

CONCLUSION:

Staff recommends that unless significant new additional or contrary information is received during the public hearing and, based upon its review and consideration of the Draft REIR and comments received and responded to in the FREIR, and the evidence submitted to the Commission, including the evidence presented in this staff report, and oral and written evidence presented at the public hearing, the Planning Commission certify Final Revisions to Environmental Impact Report REIR-03-01, and adopt Resolution No P.C. 08-28, containing appropriate findings, mitigation, a mitigation monitoring plan, and statement of overriding considerations.

If the Planning Commission first certifies the FREIR, and based upon the evidence submitted to the Commission, including the evidence presented in this staff report, and oral and written evidence presented at the public hearing, staff recommends that the Planning Commission approve Use Permit U-02-12, Vesting Tentative Map 03-P-001 and adopt Resolution No P.C. 08-29. Additionally, staff recommends that the Planning Commission approve Site Plan and Architectural Review for the Wal-Mart building 08-SP-08, P.C. 08-30.

ALTERNATIVE PLANNING COMMISSION ACTIONS:

- Certify with alternative impacts, mitigation measures and adopt findings or overriding considerations
- Deny the certification
- Approve with additional/different conditions
- Deny the Use Permit/Tentative Map
- Continue the requests

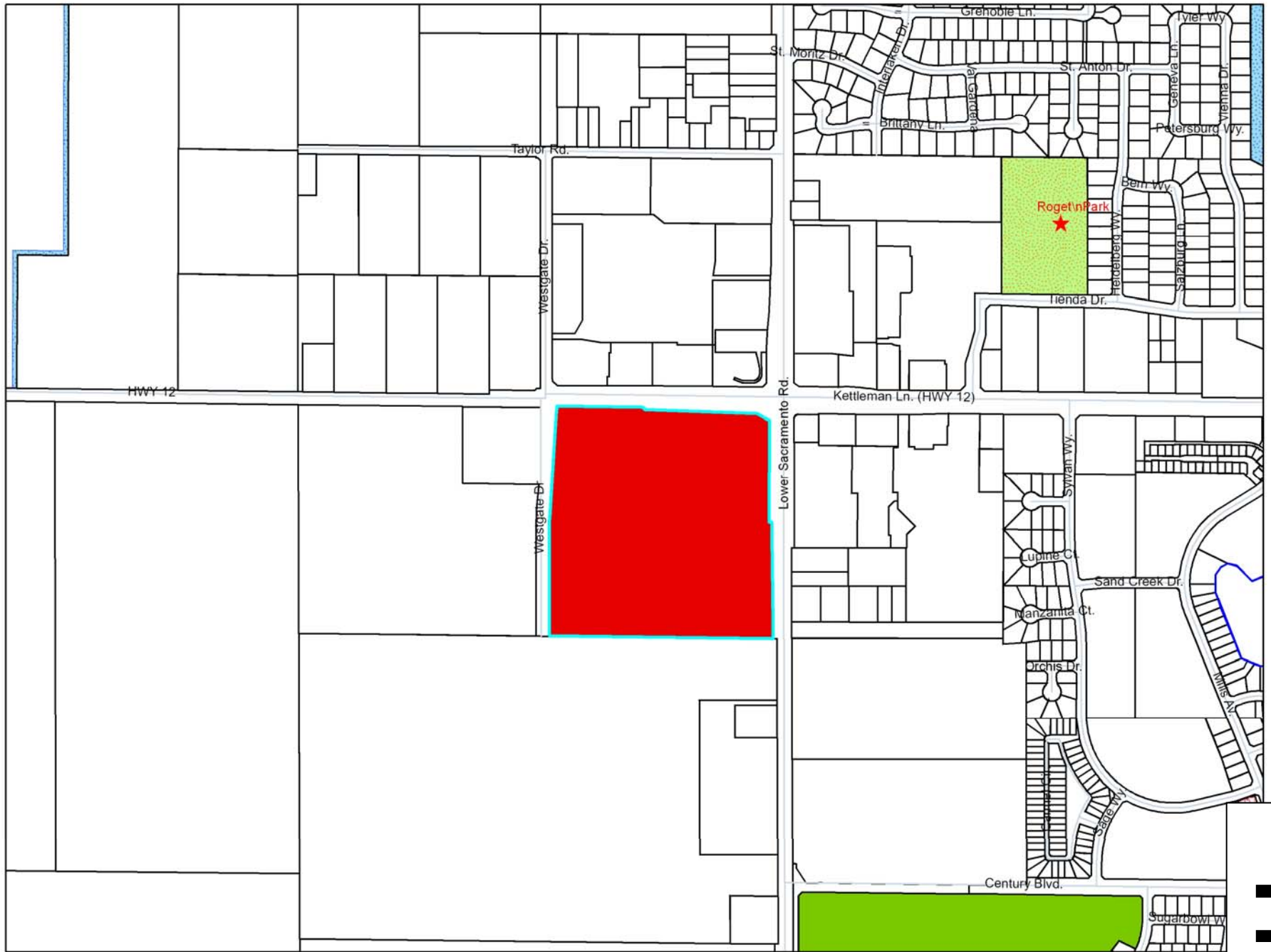
Respectfully Submitted,

Konradt Bartlam
Interim Community Development Director

ATTACHMENTS:

1. Vicinity Map
2. Site Plan
3. Vested Tentative Map
4. BAE Memorandum
5. Wal-Mart elevation and Hardscape Plan
6. Comment Letters
7. Draft P.C. Resolutions; PC 08-28, PC 08-29, & PC 08-30
8. FREIR – Hard Copies Previously Distributed (http://www.lodi.gov/com_dev/EIRs.html)

Vicinity Map



KETTLEMAN LANE

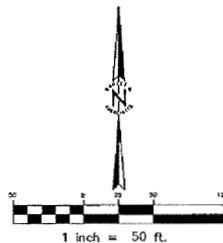
STATE HIGHWAY 12

N89°49'46"E 498.75

N89°11'26"W 207.27

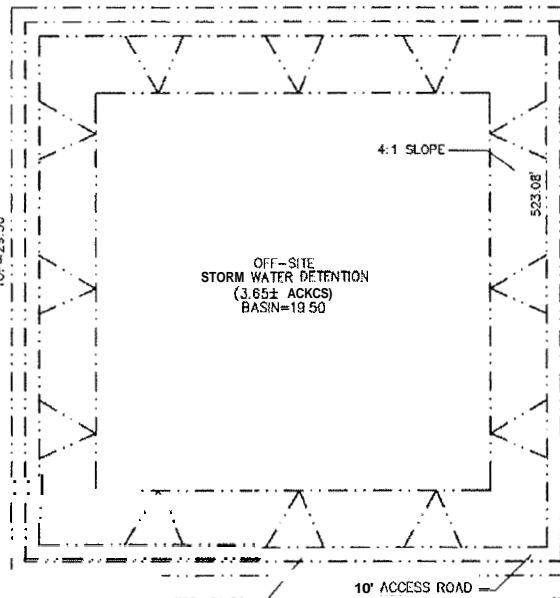
SITE NOTES

- AREA STRIPED WITH 4" SYS. AT 45° 2'-0" O.C.
- ACCESSIBLE RAMP, SEE DETAIL 9 ON SHEET C-8.3.
- PEDESTRIAN CROSSING SIGN W14-2 AND W14-7b TYPICAL AT PEDESTRIAN CROSSINGS AS NOTED ON PLANS. SEE DETAIL 2 ON SHEET C-8.3.
- "YIELD" PAINTED YELLOW ON PAVEMENT TYPICAL. SEE DETAIL 5 ON SHEET C-8.1.
- ENHANCED PAVEMENT AREA. SEE ARCHITECTURAL PLANS FOR DETAILS.
- EXT. PORCH, SEE ARCHITECTURAL PLANS FOR EXACT SIZE, LOCATION FOR STOPS, STAIRS AND/OR RAMPS THAT MAY BE REQUIRED. RAMP PAVEMENT FLUSH WITH THE TOP OF STAIR.
- 4" PIPE BOLLARD TYPICAL UNLESS NOTED OTHERWISE. SEE DETAIL 2 ON SHEET C-8.7.
- CART CROSSING SIGN, SEE DETAIL 1 ON SHEET C-8.7 AND DETAIL 10 ON SHEET C-8.2.
- 4" WIDE x 112' LONG YELLOW PAINTED TRUCK ALIGNMENT STRIPES.
- CONCRETE COMPACTOR PAD, REFER TO ARCHITECTURAL PLAN FOR EXACT LOCATION AND SLOPE.
- ACCESSIBLE PARKING SPACE TYPICAL. SEE DETAIL SHEET FOR ACCESSIBLE PARKING SPACE SIZE, SIGN AND SYMBOL ("VAN" INDICATES VAN ACCESSIBLE SPACE). SEE DETAIL 3 ON SHEET C-8.1 & DETAIL 9 ON SHEET C-8.2.
- CONCRETE TRANSFORMER PAD, CONTRACTOR TO COORDINATE WITH LOCAL POWER COMPANY FOR DETAILS.
- PLACE STOP SIGN & PAINT STOP BAR & "STOP" PER DETAIL 6 ON SHEET C-8.1 AND DETAIL 1 ON SHEET C-8.2.
- PEDESTRIAN CROSSWALK, EDGE LINES PAINTED 8" WITH INSIDE STRIPING PAINTED 4" AT 2'-0" O.C. PERPENDICULAR TO EDGE LINES. SEE DETAIL 7 ON SHEET C-8.1.
- CART CORRAL, SEE DETAIL 5 ON SHEET C-8.7.
- A.D.A. SITE ENTRANCE SIGN, SEE DETAIL 5 ON SHEET C-8.2.
- 4" PAINTED YELLOW STRIPING AT 2'-0" O.C. (TYP.) PERPENDICULAR TO PARKING SPACE. SEE DETAIL 8 ON SHEET C-8.2 (TYP.)
- 24" CONCRETE CURB AND GUTTER. SEE DETAIL 8 ON SHEET C-8.3.
- TRAFFIC FLOW ARROW, SEE DETAIL 1 SHEET C-8.1
- CONCRETE (TYP.), SEE DETAIL 7 ON SHEET C-8.3.
- MONUMENT SIGN (SEE ARCHITECTURAL PLANS).
- ALSK INDICATOR SIGNS (TYP.), SEE DETAILS 9 & 11 ON SHEET C-8.2.
- CART CROSSING WITH WALK, SEE DETAIL 1 ON SHEET C-8.7.
- "NO TRUCKS" SIGN, SEE DETAIL 4 ON SHEET C-8.2.
- "TRUCK DRIVE" SIGN, SEE DETAIL 3 ON SHEET C-8.2.
- "RIGHT TURN ONLY" SIGN, SEE DETAIL 12 ON SHEET C-8.2.
- 10'x45' PALLET/BALE STORAGE AREA.
- TRUNCATED DORIES, SEE DETAIL 4 ON SHEET C-8.7.
- SAWNOT EXISTING EDGE OF PAVEMENT TO FORM A SMOOTH UNIFORM LINE. PLACE PROPOSED PAVEMENT AGAINST SAWNOT LINE & MATCH EXISTING GRADE.
- AT GRADE OVERHEAD DOOR LOCATION, SEE ARCHITECTURAL PLANS FOR EXACT SIZE AND LOCATION FOR COORDINATION WITH CIVIL PLANS.
- PLACE GREASE/OIL INTERCEPTORS, SEE ARCHITECTURAL PLANS FOR EXACT SIZE AND LOCATION.
- SEE DETAIL 11 ON SHEET C-8.1 FOR TYPICAL PARKING STALL STRIPING DETAIL.
- SEE DETAIL 5 ON SHEET C-8.1 FOR TYPICAL PARKING STALL STRIPING DETAIL.
- TRANSFORMER PAD, SEE ARCHITECTURAL PLANS FOR EXACT LOCATION.
- * ALL PARKING LANDSCAPE ISLANDS RADIUS ARE 10' & 3', UNLESS OTHERWISE STATED ON SITE PLAN.
- CV400 INSTALL PARKING LOT LIGHTS. SEE DETAIL 6, SHEET C-8.7.
- CV400 INSTALL PARKING LOT LIGHTS. SEE DETAIL 6, SHEET C-8.7.



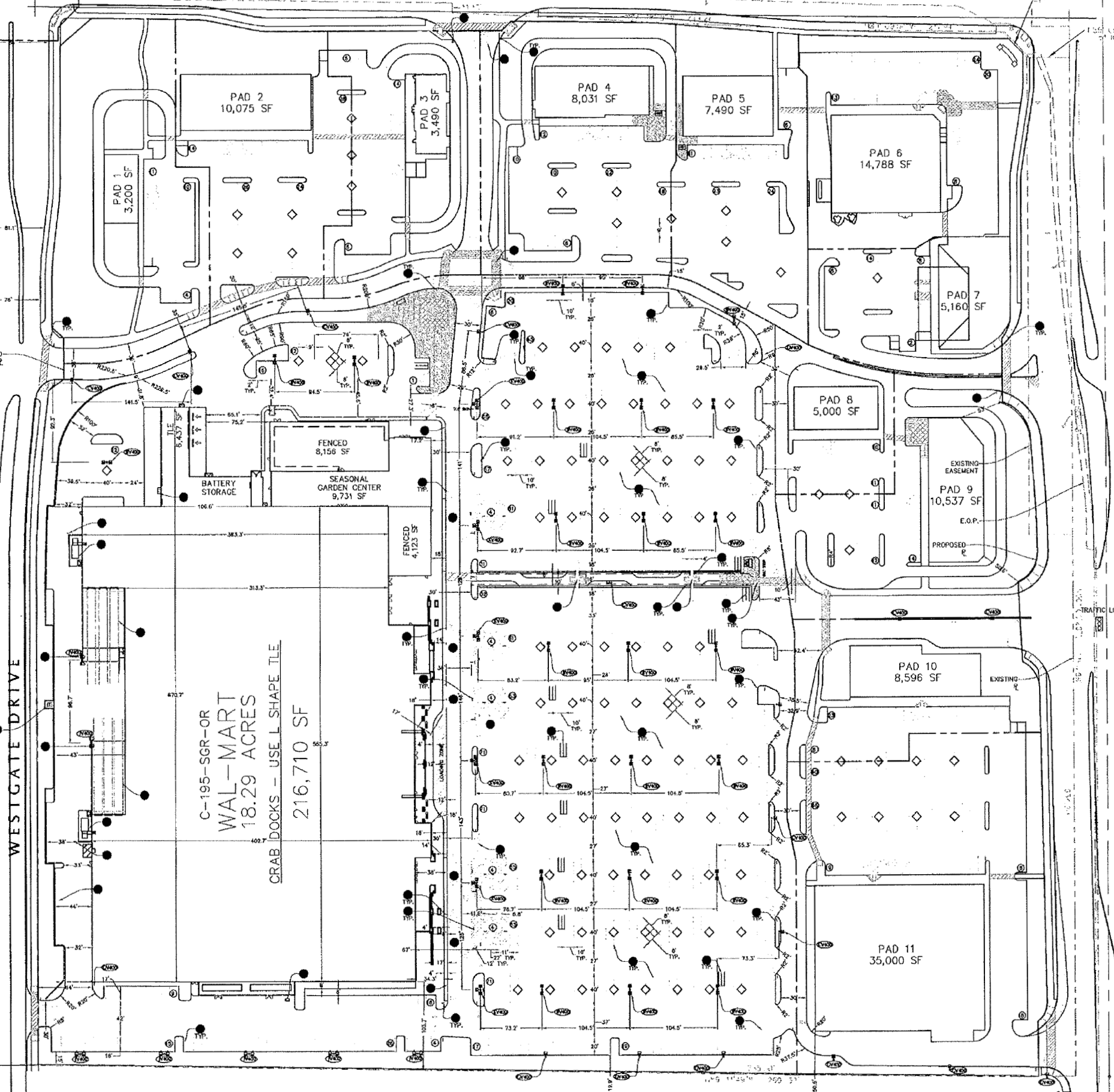
SITE DATA	
PROPOSED PARKING INFORMATION	
TOTAL PROPOSED PARKING SPACES	216,710
STANDARD SPACES	832
ACCESSIBLE SPACES	21
TRANSFORMER PAD	12
TOTAL PROPOSED PARKING	844
PARKING RATIO	4.42/1000

(S)	PARKING SPACES (TYP.)
(---)	PROPERTY LINE BOUNDARY
(---)	HEAVY DUTY ASPHALT
(---)	HEAVY DUTY CONCRETE
(---)	STANDARD DUTY ASPHALT



WESTGATE DRIVE

C-195-SGR-OR
WAL-MART
18.29 ACRES
CRAB DOCKS - USE L SHAPE TLE
216,710 SF



LOWER SACRAMENTO ROAD

DA Doucet & Associates, Inc.
330 Douglas Boulevard, Suite 425, Kettleman, CA 95641
Phone: (209) 786-3305 Fax: (209) 786-3306
www.doucet.com
Kettleman, CA

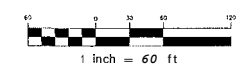
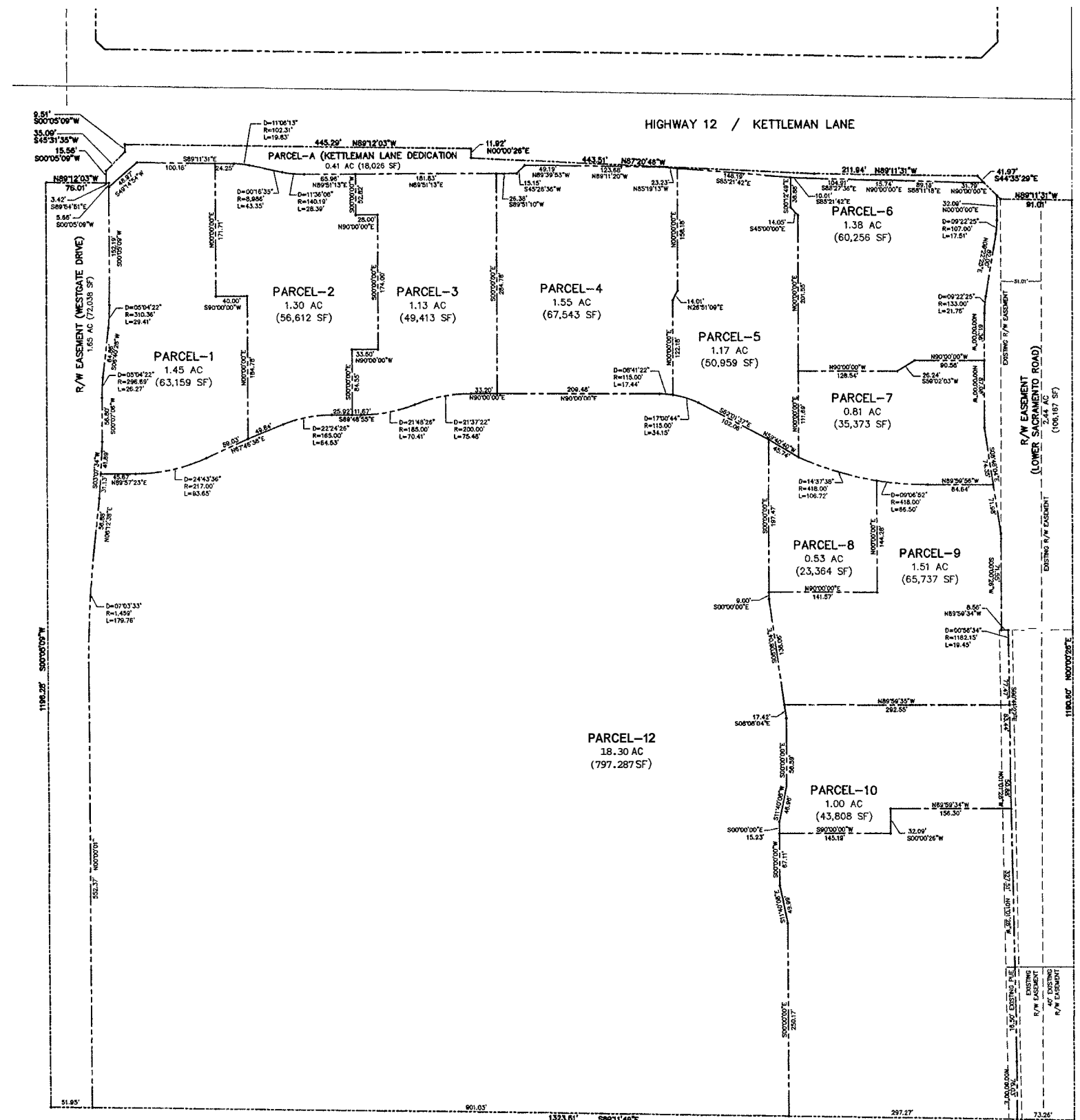
WAL-MART

SUPERCENTER #1789-03
KETTLEMAN LANE, HWY. 12
LODI, CA
SITE/HORIZONTAL PLAN

NO.	REVISION	DATE	BY	APP'D

Scale: 1" = 50'
Designed by: JF/CV
Drawn by: JF/CV
Reviewed by: RW
Date: Dec. 13, 2004

SHEET
C-2.1
OF 34
Project No:
001-272



*Vesting Tentative Map
Lot Layout
for
Lodi - III
APNs: 058-030-01 & 058-030-02
County of San Joaquin, California
August 15, 2008
Sheet 2 of 2*



DA Doucet & Associates, Inc.
1025 Creekside Ridge Drive, Suite 175
Roseville, CA 95678-1936, Phone: (916) 780-2005 Fax: (916) 780-2015
www.doucetandassociates.com



Date: October 1, 2008

To: Rad Bartlam, interim Director
City of Lodi, Community Development

From: Matt Kowta, Principal

Re: Review of Lodi Shopping Center Economic Impact/Urban Decay Analysis

The purpose of this memo is to provide you with my findings in regard to the validity of the conclusions from BAE's October 2007 Economic Impact/Urban Decay Analysis for Proposed Lodi Shopping Center in Lodi, CA, in light of the increase in the proposed Reynolds Ranch project size from 640,676 square feet of building area to approximately 750,000 square feet. The October 2007 Report had analyzed the potential cumulative impacts of the proposed Lodi Shopping Center along with the Reynolds Ranch project at 640,676 square feet and the City has requested that BAE review the conclusions from the 2007 report in light of the increase in the project size.

Potential Market Impacts of Proposed Project and Reynolds Ranch Project

Because the project description for the Lodi Shopping Center project has not changed since the preparation of the October 2007 report, there are no impacts on most parts of the report. The Reynolds Ranch project is first considered on page 62 of the report, where it was noted that the Reynolds Ranch project was anticipated to be competitive with the Lodi Shopping Center project and would potentially contribute to cumulative impacts on other existing shopping centers in the market area. Page 63 of the October 2007 report anticipated that the Reynolds Ranch project retail component would contain 640,676 square feet of retail building area. The analysis then went on to estimate how much of the existing trade area retail sales the combined Lodi Shopping Center project and Reynolds Ranch shopping centers would need to capture in order to perform at their expected sales levels. In the October 2007 report, this sales diversion was estimated at approximately 30 percent, meaning that the new stores would divert approximately 30 percent of existing stores' estimated 2008 sales (see Table 22, page 64).

BAE staff have re-calculated Table 22 of the October 2007 report based on the 750,000 square foot project size for Reynolds Ranch, holding all other inputs and assumptions constant, and the resulting sales diversion figure is 34 percent, meaning that the combined Lodi Shopping Center and Reynolds Ranch projects would be expected to divert approximately 34 percent of estimated 2008

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sales volumes from existing market area stores. Given the margin for error for this type of analysis, where there is an attempt to predict very complex shopping behaviors in the future while acknowledging the difficulty in controlling for all other variables that may come into play, this change from 30 percent to 34 percent is not significant. Also, it should be noted that the October 2007 report explained that while the 30 percent estimate reflected the loss of existing stores' 2008 sales levels, anticipated trade area population growth during the intervening time that would be necessary for the two shopping centers to be built and fully occupied will increase available trade area demand and therefore, actual sales diversions would likely be significantly lower than these figures at the time the new stores are opened. As noted on page 73 of the October 2007 report, the analysis had factored in the slowing housing market when considering the potential growth in retail demand within the Lodi area.

Page 65 of the October 2007 report indicated that the "construction of Reynolds Ranch, in combination with the Lodi Shopping Center or even alone, could lead to an oversupply of retail space in the Lodi area" and then continued with some discussion of the potential impacts on different sectors of the retail marketplace. Page 68 of the October 2007 report assumed that potential tenants for Reynolds Ranch would include a warehouse club, home improvement center, major apparel retailer, and perhaps a major electronics outlet. Based on information published by CB Richard Ellis in its 2008 Central Valley Market Outlook for retail, which can be found on the CBRE web site

(<http://www.cbre.com/USA/US/CA/Stockton/Property/centralvalleymarketoutlook.htm?pageid=7>), a Costco and Home Depot are the anticipated anchors for the project. The major project anchors play a large role in dictating the trade area that the project will serve, and the types of competitive impacts that the project will have in the marketplace.

Page 68 of the October 2007 report continues:

"In summary, the cumulative impacts of Reynolds Ranch in addition to the proposed Lodi Shopping Center may lead to substantial cannibalization of retail sales from existing outlets in Lodi and the Trade Area, putting some existing businesses at increased risk of closure. While the tenant mix for Reynolds Ranch is unconfirmed, potential tenants for such a region-serving center include a warehouse club, a home improvement center, a major apparel retailer, and perhaps a major electronics outlet. Outlets competing in these categories would be at the most additional risk. One center with substantial additional risk is the Cherokee Shopping Center, with Orchard Supply Hardware, already impacted by Lowe's, facing possible additional competition, and Kmart, a poor-performing store at risk of closure from the Lodi Shopping Center alone. At Vineyard Shopping Center, Mervyn's and Ace Hardware confront the potential for strong new competition. Sunwest Plaza, where the existing Wal-Mart is slated to close when the Supercenter opens, would have increased risk

of closure for the JC Penney store if a large apparel retailer locates at Reynolds Ranch. Throughout Lodi, vacant spaces would face more difficulty in re-tenanting as nearly one million square feet of retail space is added to the area's real estate inventory. Outside the Trade Area, the analysis indicates that the impacts of the Lodi Shopping Center in combination with Reynolds Ranch would not be substantial."

These basic conclusions remain unchanged given the expanded size of the Reynolds Ranch project, given the finding that the capture rate of sales from existing retailers would increase from 30 percent to 34 percent of current market area sales with the assumption about the expanded Reynolds Ranch project, albeit the magnitude of the potential impacts would be slightly larger. Considering the margin for error in this type of complex analysis, BAE would not reach different conclusions based on these two different estimates of sales diversion, as they are of the same order of magnitude. In other words, in preparing the October 2007 report, BAE would have reached the same conclusions about the potential cumulative impacts of the proposed project and the Reynolds Ranch project, had the finding at the time been that the diversion of sales from existing stores would have been 34 percent of the 2008 sales levels instead of 30 percent.

Potential for Urban Decay from Cumulative Impacts

Given that the change in the size of the center has apparently not substantially altered the proposed tenant mix of the center, BAE's assessment of which other shopping centers and types of retailers would be most likely to be affected by the cumulative effects of the proposed project and the Reynolds Ranch project would not change significantly. Thus, the portion of the urban decay analysis on page 73 of the October 2007 report, which deals with the potential negative economic impacts of the cumulative impacts of the Lodi Shopping Center and the Reynolds Ranch project, would not change significantly. This portion of the report stated:

"There is one reasonably foreseeable project, Reynolds Ranch that cumulatively could result in additional impacts in Lodi and the Trade Area. The Proposed Project and Reynolds Ranch combined would add nearly one million square feet to Lodi's retail inventory. Potential store closures under a cumulative scenario include the supermarket (either Safeway or S-Mart) and Kmart as mentioned under Proposed Project-only impacts, as well as one of the two hardware stores (OSH and Ace) and JC Penney or Menyns. The particular impacts will depend in large part on the tenant mix of Reynolds Ranch. With any tenant mix at Reynolds Ranch, the addition of this large amount of retail space will make re-tenanting of any closed spaces more difficult. The existing Wal-Mart space would be particularly hard to re-tenant, especially if the JC Penney closed, leaving Food 4 Less as the only remaining major tenant of Sunwest Plaza; however, this center is relatively new, and will be in close proximity to the new Supercenter, and the existing Target, Lowe's and other regional retail draws, and may attract tenants from some of the other centers. The Cherokee

Retail Center could face the loss of both anchor tenants due to the increased competition, and the Vineyard Shopping Center could lose its largest tenant, Mervyn's, along with Ace Hardware. These centers would all face more limited prospects for re-tenanting with the additional competition from newer and higher-quality space available, especially in Reynolds Ranch."

Again, given that the likely anchor tenants of the Reynolds Ranch project have not changed from the assumptions used in the October 2007 report, due to the change in project size, our assessment of potentially affected stores and shopping centers would not change and, furthermore, the approximate magnitude of the impact on other retail facilities is not of a sufficient magnitude to compel BAE to make a different judgment about the potential severity of the impacts.

In evaluating the actual risk that cumulative impacts from the proposed Lodi Shopping Center project would lead to urban decay and physical deterioration, BAE considered the City of Lodi's intent to enforce local regulations that are intended to prevent neglected or derelict properties from creating blighting conditions within the community, observing that the City has adopted a number of regulatory policies that signal that the City will take aggressive action to abate conditions on private property that may lead to blighting conditions. Considering this, the October 2007 report stated on page 75:

"the cumulative impacts resulting from the Lodi Shopping Center in combination with the Reynolds Ranch retail center, a project approximately twice as large as the Lodi Shopping Center, could result in the closure of additional existing retail outlets in Lodi, and make it more difficult to re-lease vacated space due to the large addition to the inventory in the relatively slow-growing Lodi area. As a result, some existing shopping centers could be subject to long-term vacancies. In the case of the largest potential vacant space, the existing Wal-Mart at Sunwest Plaza, the proposed development agreement would require demolition of the space if it is not re-tenanting in a relatively short period of time. However, even with the potential closure of the JC Penney in this center, Sunwest Plaza is unlikely to be subject to long-term vacancies since it is relatively new, and will be in close proximity to the new Supercenter, and the existing Target, Lowe's and other regional retail draws, and thus may attract tenants from some of the other centers in Lodi. For other centers, an oversupply of retail space could result in difficulties re-tenanting vacant retail space in a reasonable period of time, and the vacant space could then be at risk of entering a cycle of long-term vacancies, secondary business closures, the inability to re-tenant existing stores, and the eventual possibility of physical deterioration or urban decay.

The actual potential for physical deterioration to occur at a specific property will be largely dependent on the commitment from the property owner to maintain the property, which

would be more challenging in the case of multiple ownership or control. However, in the event of an owner's failure to maintain vacated properties in a condition suitable for releasing, it will be incumbent on the City of Lodi to prevent such conditions from occurring through active and aggressive enforcement of its Code provisions relating to the abatement of public nuisances due to lack of property maintenance and management. The City of Lodi has demonstrated its commitment to preventing physical deterioration of commercial properties within the City through its successful revitalization efforts in Downtown, which involved a multi-faceted long-term program including large expenditures of City funds. Per Resolution No. 2006-39, passed in March 2006, as noted above, the City Council was emphatic in its direction to staff to proactively enforce compliance with its building codes. If conditions warrant, staff is prepared to apply the receivership provisions of the California Health and Safety Code to ensure that the corrective action is taken. As such, it is fully expected that the City will continue to be aggressive in the enforcement of its nuisance ordinances relating to building maintenance. Based on its past performance and policy commitments, it is reasonable to expect that the City will not allow any commercial properties which may become vacant under cumulative conditions to deteriorate physically. **Therefore,** while there is a remote possibility that certain properties such as the Vineyard Shopping Center and Cherokee Retail Center could be subject to a causal chain ultimately resulting in urban decay under cumulative conditions, such outcomes are considered highly unlikely given that the City can be counted on to take aggressive action to prevent such conditions from occurring.

In conclusion, the limited project definition available for the revised Reynolds Ranch project precludes the preparation of a definitive analysis of potential urban decay impacts under cumulative conditions at this time. However, given the City's commitment to preventing the physical deterioration of commercial properties, even under assumptions of reasonable worst-case conditions, as discussed above, it is expected that the cumulative economic effects of the Lodi Shopping Center, when combined with the economic effects of an expanded Reynolds Ranch project, would result in a less-than-significant cumulative urban decay impact."

The change in the project description does not provide any additional information that would cause BAE to change these conclusions. This presumes that the City of Lodi remains confident in its ability and commitment to effectively use its powers to enforce its regulations to prevent blighting conditions from developing, even if the result of the increased size of the Reynolds Ranch project is a greater need for enforcement and possibly action to abate buildings that may become vacant and in disrepair due to the cumulative impacts of the Lodi Shopping Center as proposed and the Reynolds Ranch retail facility at its larger size.

Conclusion

Based on the preceding assessment of the October 2007 report and the impact of the change in the Reynolds Ranch project size on that analysis, there would be no benefit to conducting further analysis of the potential cumulative impacts of the proposed Lodi Shopping Center and the Reynolds Ranch shopping center, because the conclusions are unlikely to change. This review process has shown that even if BAE had assumed that Reynolds Ranch was to be developed with 750,000 square feet of retail space when preparing the October 2007 analysis, the conclusions and findings would not have been significantly different than what is reflected in the October 2007 report. Only if the City of Lodi is not confident that it can effectively enforce its “anti-blight” regulations in the face of a somewhat greater quantity of space at risk of becoming vacant as compared to what was determined in the October 2007 report would a revision of that report be in order.

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

LODI SHOPPING CENTER

CITY OF LODI

OCTOBER 2008

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	B. AGRICULTURAL RESOURCES				
B1. <u>Agricultural Land Conversion</u>	B1. The applicant shall obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland. The agricultural conservation easement shall consist of a single parcel of land of at least 40 acres. This easement shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement shall be in current agricultural use; if it is not in current agricultural use, the easement shall be required to be put into agricultural production as a result of the conservation easement transaction. The lands subject to the easement shall be placed under permanent restrictions on land use to ensure its continued agricultural production capacity by limiting non-farm development and other uses that are inconsistent with commercial agriculture. The easement shall be held by the City or a qualified entity (i.e., land trust) approved by the City. The applicant shall pay a fee (in an amount to be determined by the City) for purposes of establishing an endowment to provide for adequate administration, monitoring, and maintenance of the easement in perpetuity.	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of occupancy permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	C. GEOLOGY AND SOILS				
C1. <u>Seismic Ground Shaking</u>	C1. Structural damage to buildings resulting from ground shaking shall be minimized by following the requirements of the Uniform Building Code, and implementing the recommendations of the project geotechnical engineer.	Project Applicant with approval by City of Lodi Building Official and Lodi Public Works Director.	Prior to issuance of grading permits.		
C2. <u>Seismic Settlement</u>	C2. If subsequent geotechnical studies indicate unacceptable levels of potential seismic settlement, available measures to reduce the effects of such settlements would include replacement of near-surface soils with engineered fill, or supporting structures on quasi-rigid foundations, as recommended by the project geotechnical engineer.	Project Applicant with approval by City of Lodi Building Official and Lodi Public Works Director.	Prior to issuance of grading permits.		
C3. <u>Stormwater Bank Stability</u>	C3. Design-level geotechnical studies shall investigate the potential of bank instability at the proposed basin and recommend appropriate setbacks, if warranted.	Project Applicant with approval of City of Lodi Public Works Director.	Prior to issuance of grading permits.		
C4. <u>Soil Consolidation and Collapse</u>	C4. The effects of soil consolidation and collapse can be mitigated by placing shallow spread foundations on a uniform thickness of engineered fill; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.	Project Applicant with approval of City of Lodi Public Works Director and Building Official.	Prior to issuance of grading permits.		
C5. <u>Expansive Soils</u>	C5. The potential damage from soils expansion would be reduced by placement of non-expansive engineered fill below foundation slabs, or other measures as recommended by the geotechnical engineer.	Project Applicant with approval of Lodi Public Works Director and Building Official.	Prior to issuance of grading permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	C. GEOLOGY AND SOILS (Cont'd)				
C6. <u>Soil Corrosivity</u>	C6. The potential damage from soil corrosivity can be mitigated by using corrosion-resistant materials for buried utilities and systems; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.	Project Applicant with approval of City of Lodi Public Works Director.	Prior to issuance of grading permits.		
	D. HYDROLOGY AND WATER QUALITY				
D3. <u>Erosion and Sedimentation</u>	D3. A comprehensive erosion control and water pollution prevention program shall be implemented during grading and construction. (See EIR text for details.)	Project Applicant with approval by City of Lodi Public Works Director.	Throughout grading and construction of the project.		
D4. <u>Urban Non-Point Pollution</u>	D4. The project shall include stormwater controls to reduce nonpoint pollutant loads. (See EIR text for details.)	Project Applicant with final approval by City of Lodi Public Works Director.	Throughout construction and operation of project.		
	E. BIOLOGICAL RESOURCES				
E3. <u>Loss of Habitat for Special Status Animals</u>	E3. In accordance with the SJMSCP and City of Lodi requirements, the project proponent will pay the applicable in-lieu mitigation fees to compensate for loss of open space and habitat resulting from development of the project site, and will ensure the completion of preconstruction surveys for Swainson's hawks, burrowing owls, and California horned larks, as well as the implementation of specified measures if any of these species are found on the site.	Project Applicant, in accordance with SJMSCP, and with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	E. BIOLOGICAL RESOURCES (Cont'd)				
E4. <u>Disturbance to Burrowing Owls and Raptors</u>	<p>E4. The following measures shall be implemented to ensure that raptors (hawks and owls) are not disturbed during the breeding season:</p> <ul style="list-style-type: none"> • If ground disturbance is to occur during the breeding season (Feb. 1 to Aug. 31), a qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree- and ground-nesting raptors) on site within 30 days of the onset of ground disturbance. These surveys will be based on the accepted protocols (e.g., as for the burrowing owl) for the target species. If a nesting raptor is detected, then the ornithologist will, in consultation with CDFG, determine an appropriate disturbance-free zone (usually a minimum of 250 feet) around the tree that contains the nest or the burrow in which the owl is nesting. The actual size of the buffer would depend on species, topography, and type of construction activity that would occur in the vicinity of the nest. The setback area must be temporarily fenced, and construction equipment and workers shall not enter the enclosed setback area until the conclusion of the breeding season. Once the raptor abandons its nest and all young have fledged, construction can begin within the boundaries of the buffer. • If ground disturbance is to occur during the non-breeding season (September 1 to January 31), a qualified ornithologist will conduct pre-construction surveys for burrowing owls only. (Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors since these species would be expected to abandon their nests voluntarily during construction.) • If burrowing owls are detected during the non-breeding season, they can be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. (Continued on next page.) 	Project Applicant, in consultation with CDFG, and with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	E. BIOLOGICAL RESOURCES (Cont'd)				
E4. (Cont'd)	Once it has been determined that owls have vacated the site, the burrows can be collapsed and ground disturbance can proceed.				
	F. CULTURAL RESOURCES				
F1. <u>Disturbance to Buried Cultural Resources</u>	<p>F1. Implementation of the following measures will mitigate any potential impacts to cultural resources.</p> <ul style="list-style-type: none"> • In the event that prehistoric or historic archaeological materials are exposed or discovered during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional archaeologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant cultural materials followed by a professional report. • In the event that fossils are exposed during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional paleontologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant paleontological materials followed by a professional report. (Cont'd next page.) 	Project Applicant in consultation with a qualified archaeologist and/or qualified paleontologist, as applicable, with verification of mitigation by City of Lodi Community Development Director.	Throughout grading and construction of project.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	F. CULTURAL RESOURCES (Cont'd)				
F1. (Cont'd)	<ul style="list-style-type: none"> If human remains are discovered, the San Joaquin County Coroner shall be notified. The Coroner would determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who would identify a most likely descendant to make recommendations to the land owner for dealing with the human remains and any associated grave goods, as provided in Public Resources Code Section 5097.98. 				
	H. TRAFFIC AND CIRCULATION				
H2. <u>Future Plus Project Unsignalized Intersection Operations</u>	H2. The project shall contribute its fair share cost to the installation of a traffic signal at Lower Sacramento Road and Harney Lane.	Project Applicant with approval by City of Lodi Public Works Director	Prior to issuance of occupancy permits.		
H4. <u>Cumulative Plus Project Access Conditions at the Signalized Access Drive Proposed Along the Lower Sacramento Road frontage</u>	H4. Modify the project site plan to provide dual eastbound left-turn movements out of the project site onto northbound Lower Sacramento Road, consisting of a 150-foot left-turn pocket and a full travel lane back to the internal project site intersection. In the eastbound direction, a left-turn pocket and a full travel lane back to the signalized intersection will provide adequate capacity for inbound traffic. In addition, STOP signs shall be installed on all approaches except the westbound to provide continuous traffic flow into the project site and eliminate the potential for backups onto Lower Sacramento Road. On the Food 4 Less approach, a 100-foot left-turn pocket will be provided at the signalized intersection.	Project Applicant with approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	H. TRAFFIC AND CIRCULATION (Cont'd)				
H5. <u>Cumulative Plus Project Access Conditions at Northern Unsignalized Access Drive Along Lower Sacramento Road</u>	H5. The following mitigation measures shall be implemented: A) Extend a third southbound travel lane on Lower Sacramento Road from its current planned terminus at the signalized project driveway to the southern boundary of the project site; B) Construct a 100-foot southbound right-turn lane at the signalized project driveway; C) Extend the southbound left-turn pocket by 100 feet; D) Extend the taper from 60 feet to a City standard 120-foot taper; E) Eliminate the northbound left-turn lane into the northern project driveway (under Alternative B).	Project Applicant with final approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		
H6. <u>Inadequate Left-turn Lane Taper on Westgate Drive</u>	H6. The project site plan shall be modified to move the north project driveway on Westgate Drive south by 25 feet in order to accommodate the required 90-foot taper length.	Project Applicant with approval of City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		
H7. <u>Inadequate Left-turn Lane Taper on Lower Sacramento Road</u>	H7. The project site plan shall be modified to extend the northbound left-turn pocket to 250 feet, and extend the taper from 70 to a City standard 120-foot taper.	Project Applicant with approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		
H8. <u>Public Transit Service</u>	H8. The project applicant shall work with and provide fair share funding to the City of Lodi Grapeline Service and the San Joaquin Regional Transit District to expand transit service to the project.	Project Applicant with final approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	H. TRAFFIC AND CIRCULATION (Cont'd)				
H9. <u>Public Transit Stop</u>	H9. Modify the project site plan to: 1) provide a bus bay and passenger shelter at the proposed transit stop; and 2) include a second transit stop in the eastern portion of the project near Lower Sacramento Road.	Project Applicant, in consultation with City of Lodi Grapeline Service, and with approval of City of Lodi Public Works Director.	Prior to issuance of grading permits.		
H11. <u>Pedestrian Facilities</u>	H11. Pedestrian walkways and crosswalks shall be provided to serve Pads 8, 9, and 12 in order to complete the internal pedestrian circulation system.	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		
	I. NOISE				
I3. <u>Noise from Project Activity</u>	<p>I3. The following noise mitigation measures are identified as appropriate for the various types of project activities, to reduce project noise at both existing and planned future adjacent development:</p> <p><u>Rooftop Mechanical Equipment.</u> To ensure that the potential noise impact of mechanical equipment is reduced to less-than-significant levels, the applicant shall submit engineering and acoustical specifications for project mechanical equipment, for review prior to issuance of building permits for each retail building, demonstrating that the equipment design (types, location, enclosure specifications), combined with any parapets and/or screen walls, will not result in noise levels exceeding 45 dBA (Leq-hour) for any residential yards.</p> <p><u>Parking Lot Cleaning.</u> To assure compliance with the City of Lodi Noise Regulations regarding occasional excessive noise, leaf blowing in the southeast corner of the project site shall be limited to operating during the hours of 7:00 a.m. to 10:00 p.m.</p>	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of building permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	I. NOISE (Cont'd)				
I4. <u>Noise from Stormwater Basin Pump</u>	<p>I4. The following measures shall be implemented to mitigate potential noise generated by the stormwater basin pump:</p> <ol style="list-style-type: none"> 1) The pump shall be located as far as is feasible from the nearest future planned residential development. In addition, the noise levels generated by pump shall be specified to produce noise levels no greater than 45 dBA L_{eq} at the nearest residential property lines. The pump facility shall be designed so that noise levels do not exceed 45 dBA at the nearest residential property lines. The pump may need to be enclosed to meet this noise level. Plans and specifications for the pump facility shall be included in the Improvement Plans for the project and reviewed for compliance with this noise criterion. 2) In order to avoid creating a noise nuisance during nighttime hours, pump operations shall be restricted to the hours of 7 a.m. to 10 p.m., except under emergency conditions (e.g., when the basin needs to be emptied immediately to accommodate flows from another imminent storm). 	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		
I5. <u>Construction Noise</u>	<p>H5. Short-term noise impacts shall be reduced through implementation of the following measures: limiting the hours of construction; proper muffling and maintenance of equipment; prohibition of unnecessary idling; noise shielding of stationary equipment and location of such equipment away from sensitive receptors; selection of quiet equipment; notification to neighbors of construction schedule, and designation of a 'noise disturbance coordinator' to respond to noise complaints. (See EIR text for details.)</p>	Project Applicant, to be verified by the City of Lodi Building Official and City of Lodi Community Development Director.	Throughout grading and construction.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	J. AIR QUALITY				
J1. <u>Construction Emissions</u>	J1. Dust control measures shall be implemented to reduce PM ₁₀ emissions during grading and construction, as required by the City of Lodi and the San Joaquin Valley Unified Air Pollution Control District. (See EIR text for details.)	Project Applicant, to be verified by the City of Lodi Public Works Director and City of Lodi Community Development Director.	Throughout grading and construction.		
J3. <u>Regional Air Quality</u>	J3 Project design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions; however, these measures would not reduce the impact to a less-than-significant level.	Project Applicant, to be verified by the City of Lodi Building Official and City of Lodi Community Development Director.	Prior to issuance of building permits.		
J6. <u>Restaurant Odors</u>	J5. All restaurant uses within the project shall locate kitchen exhaust vents in accordance with accepted engineering practice and shall install exhaust filtration systems or other accepted methods of odor reduction.	Project Applicant with approval of City of Lodi Building Official and City of Lodi Community Development Director.	Prior to issuance of building permits.		

RESOLUTION NO. P.C. 08-28

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI
DENYING CERTIFICATION OF THE FINAL REVISED ENVIRONMENTAL IMPACT
REPORT (EIR-03-01) RELATING TO THE LODI SHOPPING CENTER;
STATE CLEARINGHOUSE NO. 2003042113**

WHEREAS, an application was filed by Browman Development Company for a commercial shopping center at 2640 W. Kettleman Lane more particularly described as Assessor's Parcel numbers 058-030-08 and 058-030-02, and a portion of 058-030-09; and

WHEREAS, the Community Development Director made a determination that the project may have a potentially significant impact on the environment and ordered the preparation of an Environmental Impact Report (EIR); and

WHEREAS, the Notice of Preparation (NOP) of the Draft EIR was prepared and distributed to reviewing agencies on April 14, 2003; and

WHEREAS, the Draft Environmental Impact Report (DEIR) was released on August 5, 2004, for circulation; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice held a study session and public hearing on September 9, 2004. Public comments on the DEIR were taken at this hearing; and

WHEREAS, a Final EIR (FEIR) responding to all public comments on the DEIR submitted prior to the expiration of the comment period was prepared and released to the public and commenting agencies on November 22, 2004; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice held a public hearing before said Commission on December 8, 2004; and

WHEREAS, the Planning Commission of the City of Lodi reviewed and certified the Final Environmental Impact Report prepared for the project; and

WHEREAS, that certification and approval was appealed to the Lodi City Council; and

WHEREAS, the Lodi City Council, on appeal, reviewed and certified the FEIR prepared for the project (Resolution No. 2005-26, February 3, 2005); and

WHEREAS, the Lodi City Council rescinded the certification of the FEIR on May 3, 2006, pursuant to Superior Court Order of December 19, 2005, which order directed revisions to be made to the EIR; and

WHEREAS, in response to the Court Order, the City prepared a Notice of Preparation (NOP) of the Revisions to the Environmental Impact Report (REIR) and distributed it to reviewing agencies on September 25, 2006; and

WHEREAS, the Draft Revisions to the Environmental Impact Report (DREIR) was released and circulated on October 17, 2007, for public comment and review; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice held a study session and public hearing on November 14, 2007. Public comments on the DREIR were received at this hearing; and

WHEREAS, a Final Revisions to the EIR (FREIR) including responses to all public comments on the DREIR submitted prior to the expiration of the comment period was prepared and released to the public and commenting agencies on August 26, 2008; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice held a public hearing before said Commission on October 8, 2008 to consider certification of the FREIR; and

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED, as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. For the reasons stated on the record at the October 8, 2008 Planning Commission hearing, the Planning Commission denies certification of the FREIR.

Dated: October 8, 2008

I hereby certify that Resolution No. P.C. 08-28 was passed and adopted by the Planning Commission of the City of Lodi at their meeting held on October 8, 2008, by the following vote:

AYES:	Commissioners: Kiser, Kirsten, Olson, Heinitz, Hennecke
NOES:	Commissioners: Cummins
ABSTAIN:	Commissioners: Mattheis

ATTEST: 
Secretary, Planning Commission

**LODI PLANNING COMMISSION
REGULAR COMMISSION MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, OCTOBER 8, 2008**

1. CALL TO ORDER / ROLL CALL

The Regular Planning Commission meeting of October 8, 2008, was called to order by Chair Kiser at 7:01 p.m.

Present: Planning Commissioners – Cummins, Heinitz, Hennecke, Kirsten, Mattheis, Olson, and Chair Kiser

Absent: Planning Commissioners – None

Also Present: Interim Community Development Director Rad Bartlam, Deputy City Attorney Janice Magdich, Outside Counsel for the City of Lodi Jonathan Hobbs and Administrative Secretary Kari Chadwick

2. MINUTES

“September 10, 2008”

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kirsten, Olson second, approved the Minutes of September 10, 2008 as written. (Commissioner Mattheis abstain because he was not present at the subject meeting)

Chair Kiser stated the rules of conduct for the Public Hearing.

3. PUBLIC HEARINGS

- a) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Kiser called for the public hearing to consider the request of Browman Development Company and Wal-Mart Real Estate Business Trust to certify the Final Revised Environmental Impact Report (EIR-03-01) to allow construction of the Lodi Shopping Center and allow all subsequent development approvals for the center; and

Request of Browman Development Company and Wal-Mart Real Estate Business Trust to approve Use Permit U-02-12 to allow the construction of a commercial center in a C-S, Commercial Shopping District, and allow the sale of alcoholic beverages at the Wal-Mart Supercenter; and

Consider approval of Vesting Tentative Map 03-P-001 to create 12 parcels for the project.

Request of Browman Development Company and Wal-Mart Real Estate Business Trust for site plan and architectural approval of a new retail building to be constructed at 1600 Westgate Drive.

Commissioner Mattheis recused himself from the hearing because his spouse is an attorney for the applicant.

Commissioner Kirsten disclosed that he met with both the applicant and an attorney for the opponent, Brett Jolley.

Commissioner Heinitz disclosed that he met with the Applicant's attorney.

Commissioner Olson disclosed that she met with a contingent from Wal-Mart and spoke with many concerned citizens.

Commissioner Hennecke disclosed that he met with the applicant, Ms. Davis, and Mr. Pedesto.

Vice Chair Cummins disclosed that he spoke with the applicant and others regarding the project.

Chair Kiser disclosed that he spoke with the applicant.

Interim Director Bartlam gave a brief PowerPoint Presentation (attached) based on the staff report. Mr. Bartlam stated that the Final Revised Environmental Impact Report (FREIR) per the Court Order focused on five specific areas: Cumulative Urban Decay, Energy Impacts, Agricultural Resource Impacts, Project Objectives, and Project Alternatives. Staff is recommending approval of the project. Mr. Bartlam introduced Jonathan Hobbs who is special outside Counsel for the City of Lodi and has been a part of this project since 2005.

Jonathon Hobbs stated that he has been representing and working with the City since the project went into litigation and has been a part of the revision process. The Court found the original EIR to be adequate except in two areas: Cumulative Impacts for Urban Decay and Energy Consumption. Both of those areas have been revised in the revisions to the EIR. The City decided to voluntarily revise three additional areas: Project Objectives, Agricultural Resources, and Project Alternatives. Under Case Law these are the only areas that are subject to review.

Commissioner Heinitz stated that he is the only remaining Commissioner that was on the Commission when this project came around in 2004. He then asked what will happen to the vacant building that is the current Wal-Mart; what the likelihood of other stores closing if this project gets approved; and in the case that other store close will the citizens have to pick-up the tab on maintenance so they don't become blighted. Mr. Bartlam stated that in a worst case scenario the Code Enforcement Division may have to step in when the property owner does not maintain the area. The City does have a variety of tools at their disposal to force the property owner to maintain their property to the City Standards. There have been circumstances in the City over the years that the Code Enforcement function has been in place where the tools to force the property owner to maintain the property have been used. Bartlam also stated that the citizens do inadvertently incur the cost because Code Enforcement falls under the City's General Fund. Heinitz stated that based on what he was told about what has happened in other cities when the stores, not just the old Wal-Mart building, close up the citizens have to kick in for the initial out lay of boarding up, repairs, and cleaning although a lien is taken out against the property for when it is ever sold. Bartlam stated that he does not know of what other cities that has happened in, but what has happen here in the past is that Code Enforcement takes the task on and liens the property. Heinitz asked for clarification regarding if it has already happened here. Mr. Bartlam stated that it had and will probably happen again, but staff can not make the connection between the Environmental Document before you and those events.

Vice Chair Cummins asked if the five areas in the revision to the EIR should be the main focus for the Commission. Mr. Bartlam stated that the five areas are the only areas that should be focused on along with the Use Permit, Tentative Map, and Site Plan & Architectural review approvals.

Hearing Opened to the Public

- Darrell Browman, Browman Development - Applicant, came forward to speak in favor of the project and answer questions. Mr. Browman addressed the concern of Commissioner Heinitz regarding the re-tenanting of the current building. He stated that this isn't a big merchant builder coming in and trying to build a store, but a long time area developer that has other long lasting developments in the City. The other retail developments owned by Browman Development in the City have a 98 to 100% occupancy. The City initiated the annexation of this property eight years ago and Mr. Browman has been working with the City on this project ever since. When Food-4-Less came to town all the other stores said it would put them out of business, but it didn't. The positive thing that happens when competition comes to the area is it spurs the other stores to reinvest and remodel which leads to revitalization. The major benefit of this project is that it solidifies this intersection as a dominate retail area. By placing this kind of quantity and quality of retail in one area it draws the kind of retail that the City has been wanting for some time. The architectural look of the building with the columns and cornices give it a pedestrian feel. Browman added that the current Wal-Mart building has been bought by Browman Development to help alleviate the concern expressed in 2004 regarding the re-tenanting of the building. Two years ago Browman Development entered into negotiations with a new tenant for the space, but the possible tenant backed out because they did not know how long the process was going to take. Browman Development is currently in negotiations with another tenant that will occupy 90% of the building. Mr. Browman stated that he is confident that they will be able to re-tenant the space with a quality tenant. Mr. Browman requested that he be allowed to

come back up at the end of the public hearing and address some of the concerns mentioned.

- Commissioner Heinitz stated that he is not comfortable with the fact that there isn't a tenant in line for the building. Mr. Browman stated that if he could tell a tenant that in 18 months he would have the space available he would have a tenant's signature today, but like the first time around with Home Depot and no guarantee of when the property would be available, he is not comfortable trying to sign someone when he can't give them a solid time frame. Browman stated that he is very comfortable with the turn-a-round time of 12 months once the project is passed to get a new tenant into that space. He stated that it doesn't do any good to create a project and destroy another, so he would not be going ahead with this if he was not confident that a new tenant would be placed in the space.
- Commissioner Kirsten asked about the cumulative economic impacts of the project and what the projected numbers are in the increased sales tax because he has not seen anything that shows those numbers. Mr. Browman stated that Aaron Rios, representative from Wal-Mart, is here to address those numbers in more detail, but the number that Browman used is the average sales tax revenue generated by a Super Center which is \$790,000, then used \$300/sf which is what they got by doing a quick test across the street and then took off \$11million in annual sales which is what they estimated for the difference in sales from whomever they backfill the tenant space with, provided Wal-Mart is a higher sales volume than the new tenant. Kirsten asked if that included the possible closure or lost revenue for other stores. Mr. Browman stated that he did not do a market analysis. If the fear of store closures is based on Wal-Mart coming in, then look around the current shopping center and the draw that Wal-Mart has had for other stores to want to be in the same area. Kirsten asked where the \$40million expected property tax increase figure came from. Browman stated that it came from a \$100/sf for building (340,000 sf) and \$10million for site work and then backed off 10%. Kirsten asked if the same cost would apply for other buildings of this size. Browman stated that he based his numbers on construction cost, so the same numbers would apply for any building of this size. Kirsten asked about the energy efficiency of the project. Mr. Browman stated that he would like to leave the answer for that question to the representative from Wal-Mart, but the understanding is that the building will exceed the current Title 24 Standards. Kirsten asked about the reduced size alternative. Mr. Browman stated that a smaller size project isn't a viable option. The size creates the synergy for that corner. The viability of bringing in the other specialty retailers such as electronic stores and book stores gets easier with the other retail surrounding the area.
- Chair Kiser asked about the 900 to 1000 jobs that will be created. Mr. Browman stated that the new Super Wal-Mart will employ about 450 and another 350 + will be employed by the other business that will be drawn to the center. Kiser asked how many are full time employees. Mr. Browman stated he did not know, but could get that number for him.
- Aaron Rios, Representative for Wal-Mart and Applicant, came forward to speak in favor of the project and answer questions. Mr. Rios stated that the current Wal-Mart building can not meet the customer demand. He stated that in regards to the Revised EIR the Commission isn't reviewing the entire project that was approved in 2004. The Commission is only responsible for looking at the five revised areas. Specific to energy, this project will not have an energy impact. The project will exceed the current Title 24 Energy Standards. Throughout the United States Wal-Mart has constructed proto-type stores to test new technologies that can then be implemented in other stores. The Agricultural mitigation will consist of over 40 acres of prime farmland which is a 1 for 1 ratio for this project. In 2005 the National Fish and Wildlife Foundation and Wal-Mart launched the "Acres for America Program". The goal is to permanently protect one acre of important wildlife habitat for every acre developed by Wal-Mart. To date that is 350,000 acres of land. The Applicant, Browman Company and Wal-Mart, will be investing \$700,000+ in the downtown area even though it has been shown there will not be an impact from this project on the Downtown. The average Super Center in California contributes \$790,000 to their cities sales tax. The sales tax will increase approximately 23% based on the past examples of Super Stores opening. A lot of the agricultural goods will come from local produce companies.

- Commissioner Heinitz stated his appreciation for the Wal-Mart that the City already has and for their continued work in the community. He then stated his opposition to Mr. Rios, by telling this Commission that they only have to focus on the five issues in the revised EIR. Heinitz stated that he is the only Commissioner left on the Commission that was present at the time of the first hearing and to expect this Commission to accept those findings and just look at the revised issues is wrong. The Commission needs to look at every single element. He asked why not just remodel the current store? Mr. Rios stated that the new store will have wider isles and offer a better place for the customers to shop. He then compared the experience to his family of 4 people living in a studio apartment verses a three bedroom home; could he do it, yes, but is it the best way to take care of his family/customers, no.
- Commissioner Kirsten stated his appreciation of Wal-Mart's contribution to the World of Wonders Museum. He then asked about the intended energy impacts. Mr. Rios stated that the items outlined in the letter from the real estate division will be included in the new store and if there are any other items that prove to be energy efficient those will be included. What proves to work elsewhere will be included in this building. Kirsten asked if these items should be a part of the conditions of approval. Mr. Rios stated that these items exceed the minimum requirements already. Kirsten asked about the viability of Wal-Mart using the option of acquiring a piece a property in the downtown for \$700,000 and then turning around and selling it providing for the mitigation requirement and giving a zero benefit to the downtown area. Mr. Rios stated that there is no immediate intention by the Wal-Mart real estate group to purchase property downtown. What has been explored to date is making some kind of investments in downtown Lodi along with the developer to meet that mitigation requirement. Kirsten would like to tighten up the verbiage for the mitigation requirements on the downtown. Mr. Rios stated that, with respect for Commissioner Kirsten's concerns, staff has put many hours into this project and the mitigation requirements, and using a quote from Mr. Bartlam that was in the paper "this is the most extensive list of Conditions of Approval that he has seen in 28 years". He does know if playing with the language, that staff has dedicated so much time too, is the most beneficial use of the Commissions time, but respects their ability if they so choose. Kirsten then asked about the examples on the increase in sales tax. In the example of a current Wal-Mart Store to a Super Wal-Mart Store what was the increase in sales tax. Mr. Rios stated that in La Quinta, where a regular Wal-Mart store was being replaced by a Super Center, the retail sales tax the year before the store opened was \$100 million, the year that the Super Center opened was \$127 million, and the year after was \$258 million. Kirsten asked for clarification as to those figures being total retail for the entire area including all growth not just for Wal-Mart. Mr. Rios stated that is correct. Kirsten asked for a math check, would you not subtract the existing Wal-Mart tax revenues from the new Super Center tax revenues to get the total of the increase in tax revenues? Mr. Rios stated that hypothetically if the current tax revenues for the existing Wal-Mart were at \$500,000 and then just by moving across the street and opening up the new Super Center that would increase the contribution just from Wal-Mart to \$790,000, now you have to consider the rest of the retail center which increases it that much more. Kirsten stated that you would have to consider the lost sales from your competition also, would you not? Rios stated that looking at the raw numbers based on past experiences the tax revenues increasing 23%. Kirsten asked about the lower prices playing a factor, example: buy a toaster at company X for \$30 and buy a toaster at company Y for \$20, do you not lose 33% of your sales revenue? Rios stated that no, because by lowering the price you increase the volume, not necessarily with toasters but overall.
- Chair Kiser asked for clarification regarding employee benefits and if Wal-Mart covers 92% of the employees with coverage. Mr. Rios stated that 92% of Wal-Mart employees have coverage either with a spouses plan or with Wal-Mart. Out of the 92% over 50% are using the Wal-Mart Plan. Kiser asked if Wal-Mart is in a LEED Program. Mr. Rios stated that they are not in a LEED Program. Kiser then stated that Wal-Mart is only doing what is mandated by the State of California regarding energy. Mr. Rios stated that it will exceed that standard.

- Commissioner Hennecke asked about Solar Panels being used in any other stores. Mr. Rios stated that yes they are currently doing a 22 store test. Hennecke asked why the Applicant is agreeing to pay so much money to the Downtown when the project shows no impact and the Reynolds Ranch Project that was just before the Commission which has retail and shows no impact, doesn't have to pay. Mr. Rios stated that was one of the conditions placed on the project by City Staff, so that the project could move on

Chair Kiser called for a 5 minute recess (8:35).

Chair Kiser Called the meeting back to order (8:46).

- Mary Miller, Lodi, came forward to oppose the project. Ms. Miller stated that she was not happy when the original store came to town and doesn't feel that the Super Center will send the right message about how Lodi should grow. She stated that she is considering moving back to Carlsbad if this passes.
- Dennis Satler, Lodi, came forward to oppose the project. Mr. Satler is concerned with the amount of retail coming to the City. The economic times are tough as the market downturn is proving. If too many big retailers are in a market it will run small retailers out. The internet is also taking up a lot of sales.
- Bruce Schweigerdt, Lodi, came forward to support the project. Mr. Schweigerdt stated that the current store is old and needing major revisions. He believes that the Planning Commission should be encouraging this project.
- Wanda Van Santen, Lodi, came forward to support the project. Ms. Van Santen stated that since she was in an accident it makes it tough to get around. She would like to have a one stop shopping store.
- Mark Anaforian, Lodi, came forward to oppose the project. Mr. Anaforian stated that when the first Wal-Mart came to town he was working for the Lodi Avenue Longs Drug Store and the same promises were made and the downtown Longs Drug Store lost 1/3 of their business and was forced to layoff employees. According to the Stockton Record of Sept. 18, 2008; grocery stores would experience 16% loss in sales the first year, Target & K-Mart together would experience a 46% loss the first year and by the third year sales would still be down by 38% with K-Mart being at a high risk of closing. As of May 2000 Wal-Mart had abandoned 25 million square feet of occupied store. The economy is not growing. Mr. Anaforian believes we should be supporting those businesses that have been here for a long time.
- Shawn Piazza, Lodi, came forward to oppose the project. Mr. Piazza stated that the forward thinking of growing is not good timing. The economy is retracting not expanding. He is hearing that the Planning Commission is here tonight just to focus on the Environmental Impact report and he believes this is wrong. The Commission should be looking at the big picture. He commended the Commission for their tough questions and bringing the base numbers to the people that weren't aware.
- Chris Podesto, Lodi, came forward to oppose the project. Mr. Podesto stated that the Food 4 Less Store has 100% Health coverage. Food 4 Less is vested in the community and has given money to support area activities. The store currently shares the shopping center with the current Wal-Mart which is the anchor store for the shopping center. When that Wal-Mart moves across the street not only does the current shopping center lose it's anchor but it puts a discount grocery competitor right across the street in an area that is already inundated with grocery stores.
- Suzie Wilbourn, Lodi, came forward as part of the Lodi First group to protect Lodi's Downtown and oppose the project. Ms. Wilbourn stated that the Environmental Document does not address the additional store closures. She also opposes the extra traffic, security, and environmental issues. Wal-Mart has a past practice of fighting the additional tax revenues assessed with the new stores in court and does not want to see that happen here.

- Marlene Borchers, Lodi, came forward to support the project. Ms. Borchers is the current store manager at Wal-Mart. Wal-Mart has given her many opportunities to advance and gives others that may not have the education to do the same. She stated that Wal-Mart donates extensively within the City. She has heard overwhelming support from customers for the new Super Wal-Mart. Wal-Mart saves people money and that is what is needed in this tough economy.
- Gene Davenport, Galt, came forward to oppose the project. Mr. Davenport stated that there are too many unknowns. The Downtown mitigation of \$680,000 isn't going to cover it when you consider the effects in down the road, it's a pittance. Mr. Rios doesn't give any figures on the cost of social and city services, which will increase. If Wal-Mart wants to be here let them be here, they don't deserve a Super Center just because they want one. The surrounding stores pay a livable wage in this community, Wal-Mart does not pay a livable wage for this community.
- Corey Manos, Lodi, came forward to oppose the project and is a part of Lodi First. Mr. Manos stated that he and his family moved to the area six years ago because of the small town feel. He wanted to point out what was happening in Elk Grove and doesn't want to see that happen in Lodi.
- Brenda Manos, Lodi, came forward to oppose the project. Mrs. Manos stated that she is a causality of the Super Wal-Mart in Stockton. She worked for a Pharmacy that had to close its doors and she lost her job. She is a part of the Lodi First group which supports the local businesses first. She pointed out that when the citizens voted for Measure R it was not for a Super Wal-Mart, but for requiring a City wide vote for any retail establishment wanting to exceed 125,000 square feet.
- Elsie Greenwood, Lodi, came forward to support the project. She has been a member of this community for over 50 years. Lodi doesn't provide for the elderly in regards to parking. Ms. Greenwood votes yes on the Super Wal-Mart.
- Treacy Elliot, Lodi, came forward to oppose the project. Lakewood Mall has become a ghost town with the loss of retail. When the EIR was done it talked about the cumulative impact it would have along with the Reynolds Ranch Project, but now we've approved even more retail in that project. If we keep building retail out the retail within will die.
- Denise Joyner, Lodi, came forward to support the project. There are a lot of handicapped and elderly that could use the wider isles to get around. The employees are very helpful. Ms. Joyner has tried to shop downtown, but it is too hard to get around.
- Rose Deak, Lodi, came forward to support the project. The associates are always available to help you out and the management is always helpful with donations to community needs.
- Shirley Burns, Lodi, came forward to support the project. She and many of her friends take special trips into Stockton to shop because they can't find the items they need here. She shops at Raley's, Food 4 Less, and S-Mart and will continue to shop at those establishments.
- Jennifer Holtz, Lodi, came forward to oppose the project because of the sale of alcohol. She doesn't feel safe with that.
- B.J. Simpson, Lodi, came forward to support the project. She stated that she is 83 years old and will some day have to depend on someone to take her to the store and she would like to have a one-stop-shop store, so she does not have to be overly burdensome.
- James Lanchester, Lodi, came forward to support the project. He stated ditto on what has been said for the project. He currently shops at the Super Center in Stockton and would like to be able to keep his tax dollars here in Lodi.
- Phyllis Rabusin, Lodi, came forward to oppose the project. She sees Lodi as a quaint tourist attraction with its downtown. Ms. Rabusin feels Wal-Mart detracts from that image.
- Linda Nelson, Lodi, came forward to support the project. Ms. Nelson stated that she is a 14 year associate at Wal-Mart and has health coverage through them. She makes a good

wage and will continue to shop at other stores around town. There are no grocery stores downtown. The Super Center will not impact that area. The current Wal-Mart has not affected that area, so adding groceries to it won't either.

- Tim Jacobsen, Lodi, is a district manager for Wal-Mart and came forward to support the project. Mr. Jacobsen stated that with the economy the way it is people will be looking to save money. People are going to Stockton to shop at the Super Center or Winco because of the hard times. He would like to see the tax dollars stay in Lodi.
- Andrea Violet, Lodi, came forward to support the project. She would like to see the item placed back on the ballot as a Super Wal-Mart item, because that is what a lot of citizens thought they were voting for with Measure R.
- Bill Freitas, Lodi, came forward to oppose the project. Where is the need for this store?
- Karen Helmandollar, Lodi, came forward to support the project. Mrs. Helmandollar is grateful to Wal-Mart for hiring a senior citizen. She has her health coverage through Wal-Mart and is very happy with it.
- Michael Tener, Lodi, came forward to oppose the project. Mr. Tener stated that the EIR states that there will be a less than significant impact on Urban Decay and he finds that very hard to believe.
- Don Mooney, Attorney for Citizens for Open Government, submitted a document (attached) and came forward to oppose the project and answer questions. Mr. Mooney stated that as a result of the Lawsuit the original EIR decisions were rescinded, therefore the original EIR is not an approved document. The provisions for greenhouse gas emissions do not meet the new requirements that have been signed into law by the Governor (AB32) and should have been taken into consideration when doing the new REIR. The economy has had some drastic changes recently. The Impact of Urban Decay should have been looked at closer in regards to other grocery store closures.
- Commissioner Hennecke asked about the focus of Citizens for Open Government on all development or just the Wal-Mart project. Mr. Mooney stated that he represents the group only on this issue.
- Vice Chair Cummins asked if Mr. Mooney knew about this meeting well in advance of tonight and if so, why is the Commission just now receiving a 100+ page document. Mr. Mooney stated that he did try to email the document earlier in the day, but it did not go through.
- Commissioner Kirsten asked that the audience to be courteous. The waving of the vote papers is not helpful.
- Commissioner Olson asked about the AB32 item mentioned earlier, is it in effect right now? Mr. Mooney stated that it is in effect now, but there is some confusion as to how it affects CEQA. Part of the Legislation associated with the budget required the State to adopt regulations under CEQA implementing AB32, which have not been adopted yet. CEQA even without the adoption has an obligation to comply with the Greenhouse Gas Emissions. The Governor's office has stated that if a project does not meet the regulations then it does not comply under CEQA. The threshold that has been set is 0% increase in emissions, so if the project increases greenhouse emissions at all then there must be impact mitigations stated. Olson asked if there has been enough study done for this project in Mr. Mooney's opinion. Mr. Mooney stated that there has not. Mr. Mooney also stated that he litigated this issue in court against CalTrans and won.
- Vice Chair Cummins asked if the AB32 reductions need to be done by 2020. Mr. Mooney stated that yes, but the thresholds should be considered now.
- Commissioner Hennecke asked staff to clarify the AB32 regulations. Mr. Hobbs stated that the emissions are to be reduced to the 1990 level by the year 2020 and became effective January 1, 2007. It does not mandate specific requirements at this time. There is a current legal debate going on right now regarding whether or not CEQA requires analysis on greenhouse gases. If you start a project right now it probably does require you to look at

that area, but this project was originally approved in 2004. The concept of greenhouse gases was not new in 2005 and should have been raised during the litigation which would have made it possible for them to pursue those claims now. Mr. Mooney's group is entitled to pursue claims that may have been raised and challenged in the original EIR. What the current procedure of this case does allow is for them to raise new issues that were not in place during the original process. The CalTrans case that Mr. Mooney referred to was a new case and the court ruled that they should have looked at the greenhouse gases.

- Anita Quroi, Lockeford, came forward to oppose the project.
- Commissioner Kirsten asked what Ms. Quroi meant by "suck-up the recourses". Ms. Quroi stated that the more people drawn to the area by this project will be sucking-up the City's resources such as; water, air quality, police services, hospital.
- Jag Batth, Lodi, came forward to state that his comments will have to wait for the Council level of this project.
- Mark Ruggiero, Lodi, came forward to oppose the project.
- Jennifer Bond, Lodi, came forward to oppose the project. Ms. Bond wants to know how all the good things that Wal-Mart does currently for the community are going to change if they move. There are a lot of other businesses other than in the Downtown that will be affected by a Super Wal-Mart.
- Brett Jolley, Attorney representing Lodi First, came forward to oppose the project and answer questions. The decision that should be made tonight should not be based on whether this is a good project or if this is a good retailer or not but whether or not the EIR has provided enough information for you to certify. There are two steps for the Commission; first is to determine if the EIR provides enough information, if it does then it should be certified, second is to determine whether or not this project is right for the community. Mr. Jolley does not feel that this project should make it to step two. The EIR states that there is insufficient evidence to determine Urban Decay. CEQA states that insufficient evidence is not a viable determination. There have been a lot of comments made by the Wal-Mart Representative about exceeding the Title 24 compliance. This is not a good quantification of what the energy saving features will be. The State Building Commission just adopted changes to Title 24 last month which are designed to in part implement the AB32 guidelines that Mr. Mooney talked about by requiring greener building standards designed to reduce greenhouse emissions. The catch is that the guidelines are voluntary through 2009 and become mandatory in 2010, so if Wal-Mart builds in 2009 and doesn't follow the voluntary guidelines they will be building a below standard project. There are two options missing from the alternative project size from the Project Alternatives Section; one being reducing the entire project proportionately, not just taking out all the other retail pads and leaving Wal-Mart at the same size. The other alternative missing is the High Efficiency (HE) alternative. If you go to Wal-Mart's website they state that the new HE store that was opened up in Las Vegas is 45% more energy efficient than a regular Super Center, which is what is planned for Lodi. In CEQA when the EIR concludes that the project will have significant and unavoidable effects, which this EIR does for both agricultural land conversion and air quality impacts, the Commission then has the obligations to make specific findings before approving the project. The Commission must decide whether the benefits of the project outweigh the significant unavoidable impacts.
- Commissioner Kirsten asked how a store closure is connected to urban decay/blight. Mr. Jolley stated that the EIR states that the urban decay will be less than significant because the space can be re-tenanted which was based on the economy in October 2007. The staff report states that new Code Enforcement Officer was hired to handle this kind of blight which is a drain on taxpayers. Kirsten asked if because of the strict code enforcement even if you don't re-tenant the store right away it won't necessarily lead to urban decay. Mr. Jolley stated that is possible.
- Ann Cerney, Lodi, came forward to oppose the project. She stated that she does not feel that the Commission has an EIR before them and that they should have one with all the comments submitted for this project.

- Gary Silva, Lodi, came forward to oppose the project. Mr. Silva would like to see the Commission consider other options such as, stores that are not grocery stores for this project area. These types of stores would overlap and work well with the surrounding area and not be so combative. He would like to see a development in that area, but would like to see something that would work with the area not against.
- Pat Patrick, President of the Chamber of Commerce, came forward to support the project. The Chamber supports free enterprise. The Chamber led the campaign for No on Measure R. Even though as stated here tonight the Measure was not technically about Wal-Mart it was emotionally about Wal-Mart. The most knowledgeable person in the City employ has recommended that the Commission accept this proposal tonight. Mr. Patrick does not believe, due to past dealings with Mr. Bartlam, that he would have brought this project before the Commission with the approval recommendation if it was going to be detrimental to rest of the business community within the City, nor would the Chamber feel the same way. For people to stand up here and tell the Commission that they need to make a decision based on the fact that the country is in a down economy then they need to tell you how long we will be in that down turn.
- Commissioner Olson asked if the membership of the Chamber of Commerce took a vote to support the project. Mr. Patrick stated that they did not.

Public Portion of Hearing Closed

Chair Kiser called for a brief recess (10:38).

Chair Kiser called the meeting back to order (10:43).

- Commissioner Heinitz stated his opposition to the project. He does not feel that a move across the street is the best move for Lodi. Heinitz stated that his main concerns are blight and the existing building. He would rather see Wal-Mart expand their current store and just make a smaller version of a Super Center. He stated his respect for staff, but also stated that staff is here to tell us if the project fits the laws, not if it fits Lodi. The Commission needs to take the next step beyond that and listen to what the citizens want also. Commissioner Heinitz stated that he can not support the project.
- Commissioner Olson asked if this project came about before the Redevelopment Area project. Mr. Bartlam stated that this is correct. Olson asked if for a Redevelopment area to be developed there has to be some blight already in the area. Mr. Bartlam agreed. Ms. Olson asked then how can there be a determination of no blight if there has already been areas found. Mr. Bartlam stated that a blight and an Urban Decay analysis are two different types of analysis. For the first EIR a blight analysis was what was essentially done and then found insufficient through the Court hence the reason for the Urban Decay analysis being done for the Revised EIR. The K-Mart Center on Cherokee Lane was the focus of concern in the Economic Analysis and is in the Redevelopment area. This should give the Commission some level of comfort because of the tools that will now be made available to assist the Center in maintaining a level playing field with any new development. Olson stated that she is a huge proponent of Redevelopment, but it seems odd to be creating a problem just because we now have the tools to fix it. She continued by stating that Mr. Bartlam was correct; just because we have an economically disadvantaged area doesn't mean that urban decay or blight is determined just by a closed store. Olson stated that with the extremely narrow view that she has been given to make any determinations regarding the project has her perplexed. She is having a hard time relating what was done a couple of years ago to what she feels is relevant today. She would like to be able to ask the applicant to go back and look at some of the environmental items such as greenhouse gas emissions and include them in the scope of the project; is that possible? Mr. Bartlam stated that yes you can ask, but Council sets the policy. The Council could have opened it up for more review, but they didn't. Olson stated that she would like to have additional areas to look at and can not support the project with the limited look that has been granted.

- Commissioner Kirsten stated that he shares Commissioners Heinitz and Olson's views and would like to focus his comments on the BAE analysis. Kirsten feels that the report is shallow and insufficient. The report acknowledges potential store closures such as; S-Mart, K-Mart, Orchard Supply/Ace, JC Penny, or Mervyns, but the report states that there is insufficient evidence to draw any conclusions. Kirsten believes that the resources and statistical modeling are available to do a more thorough analysis. He can not support the project at this time.
- Vice Chair Cummins stated that there has been a lot of discussion on whether we need a Super Wal-Mart. The 40 acre parcel that this project is proposed to occupy has been sitting vacant except for the weeds and campaign signs for over a decade. There seems to be a lot of fear regarding the economy right now. Cummins stated that he remembers back when Food-4-less was trying to open up and there was a lot of fear then about other grocery stores closing, but that didn't happen. When Rancho San Miguel opened up a few years ago there were 350,000 sf of grocery store space already in Lodi, but there wasn't any fear about other stores closing. Cummins stated that he spoke with the K-Mart store manager and learned that the store has been under producing for the last ten years. He added that he got several calls from concerned citizens. Cummins stated that he spoke with the City Manager today regarding the budget and the City is in dire need of more revenue. What other store is capable of developing a 40 acre regional shopping center other than Wal-Mart. There will be 11 other pads that will be a part of this project which will bring in several more jobs. The developer has an excellent track record in Lodi. There are some issues with AB32, but legal counsel has stated that it will not be an issue in this case. Commissioner Cummins stated his support of the project and will vote in favor of certifying the EIR.
- Commissioner Hennecke stated that while the attorneys would like to tell us that we have only to look at the EIR, we are human beings and we can not help but think of it on a personal level. He believes that one of the Commissions duties is growth, and the future growth of the City should be considered. He does not feel that a Super Wal-Mart is a good fit for Lodi. He would like to see more of the list of what the store is going to do, rather than what they could or could not do. As the project stand, he can not vote in favor of certifying the EIR.
- Chair Kiser stated that he has issues with decay and is not satisfied with the mitigations offered in this REIR. He would like to see the greenhouse gas emissions considered in regards to the new AB32 bill. He isn't satisfied with the energy standards being met. Kiser does not support this project and can not support this EIR.

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Hennecke, Heinitz second, denied the request of Browman Development Company and Wal-Mart Real Estate Business Trust to certify the Final Revised Environmental Impact Report (EIR-03-01) to allow construction of the Lodi Shopping Center and allow all subsequent development approvals for the center. The motion carried by the following vote:

Ayes: Commissioners – Heinitz, Hennecke, Kirsten, Olson, and Chair Kiser
Noes: Commissioners – Cummins
Abstain: Commissioners – Mattheis

Chair Kiser asked if the rest of the item needed to have a vote. Mr. Hobbs stated that the project can not be approved because there isn't a Certified EIR, however the Commission can move to deny the rest of the project keeping it all together so that if the denial gets appealed it would keep everything together and put it all at the Council level. Mr. Hobbs recommends denying the entire project, so that it is kept together in one package.

MOTION:

The Planning Commission, on motion of Commissioner Kirsten, Kiser second, to deny the request of Browman Development Company and Wal-Mart Real Estate Business Trust to

approve Use Permit U-02-12 to allow the construction of a commercial center in a C-S, Commercial Shopping District, and allow the sale of alcoholic beverages at the Wal-Mart Supercenter; and

Consider approval of Vesting Tentative Map 03-P-001 to create 12 parcels for the project; and

The request of Browman Development Company and Wal-Mart Real Estate Business Trust for site plan and architectural approval of a new retail building to be constructed at 1600 Westgate Drive.

Commissioner Olson requested clarification on the recommendation. Mr. Bartlam stated that what Mr. Hobbs suggested was that the project could not be approved without a certified EIR, but it could be denied so that it can be kept together in a complete package with the EIR so that the City Council could review the entire project, not just the Revised EIR assuming an appeal of the Commissions action.

Commissioner Kirsten withdrew his motion.

Commissioner Olson stated that to deny the entire project would expedite the entire project for the applicant. Olson stated that she doesn't necessarily want to deny the project all together, so leaving them separate does not bother her.

Commissioner Heinritz does not want to sign off on the project all together. If this EIR goes to the City Council and they choose to override the Commissions decision, Heinritz stated that he would like to still have say in the rest of the project.

Commissioner Hennecke stated that he would like to have another look at the project if the EIR gets certified by Council.

Chair Kiser stated his agreement with his fellow Commissioners, therefore the balance of the requests were tabled for possible further action.

Commissioner Mattheis rejoined the Commission.

Deputy City Attorney Magdich stated that the Commission will need to take a vote to continue the meeting beyond 11:00pm.

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kirsten, Heinritz second, chose to continue with the rest of the meeting past 11:00pm. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Heinritz, Hennecke, Kirsten, Mattheis, Olson, and Chair Kiser

Noes: Commissioners – None

4. PLANNING MATTERS/FOLLOW-UP ITEMS

None

5. ANNOUNCEMENTS AND CORRESPONDENCE

None

6. ACTIONS OF THE CITY COUNCIL

Interim Director Bartlam pointed out the summary memo in the packet and stated that staff was available to answer any questions.

7. GENERAL PLAN UPDATE/DEVELOPMENT CODE UPDATE

Interim Director Bartlam stated that the Draft Preferred Plan will be coming before the Commission at the first meeting in November.

Continued

8. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE

Chair Kiser gave a brief report on the meeting of October 6th, specifically regarding the property over on Cherokee Lane that the Commission denied the service station and Mini Mart plan. Kiser stated that the project came back as a Café/Deli and has been approved by SPARC. Commissioner Mattheis stated his appreciation of the Commission for sticking with their ideals and seeking a much better use of this property.

9. ART IN PUBLIC PLACES

None

10. COMMENTS BY THE PUBLIC

None

11. COMMENTS BY STAFF AND COMMISSIONERS

Vice Chair Cummins congratulated Commissioner Mattheis on his recent nuptials.

12. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 11:18 p.m.

ATTEST:

Konradt Bartlam
Interim Community Development Director



Lodi Shopping Center

Applicant:

Browman Development Company

File No.:

**EIR-03-01-Final Revised EIR
U-02-12 – Use Permit
03-P-001 – Vesting Tentative Map
08-SP-08 - SPARC**



Lodi Shopping Center

- **Final Revised Environmental Impact Report:**
 - The Revised EIR includes the five (5) sections which were subject to revision or augmentation as directed by the Court.
 - Cumulative Urban Decay Impacts
 - Energy Impacts
 - Agricultural Resource Impacts
 - Project Objectives
 - Project Alternatives
- **Use Permit:** C-S, Commercial Shopping District plan review of the site as well as the sale of alcoholic beverages within Wal-Mart building.
- **Vesting Tentative Map:** Allows the subdivision of the property into 12 parcels.
- **Site Plan and Architectural Review:** Required for all buildings in a C-S zone designation. Focus on architecture and site design.

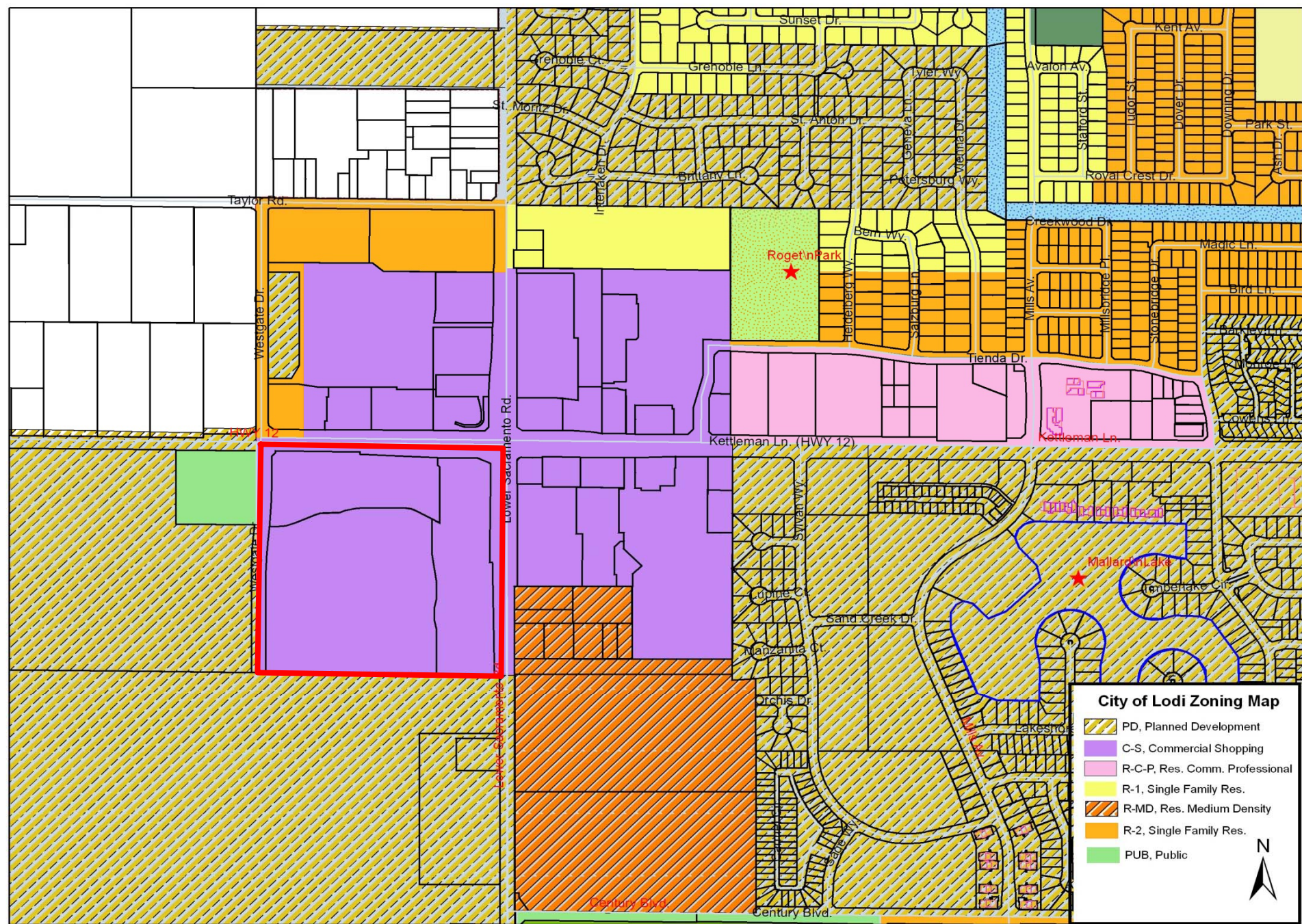


Lodi Shopping Center

■ **Background:**

- **Planning Commission approval:** December, 2004
- **City Council approval:** February, 2005
- **EIR found deficient for cumulative urban decay and energy impacts:** December, 2005
- **City Council rescinds original approvals:** May, 2006
- **Draft Revised EIR:** October, 2007
- **Final Revised EIR:** March, 2008

Lodi Shopping Center: Zoning & Vicinity Map



Lodi Shopping Center: Aerial View





Lodi Shopping Center

- **Summary of Environmental Impacts:**
 - The project would include new retailers who would compete with existing retailers in the City of Lodi;
 - There is insufficient evidence to suggest that this increased competition would result in any business closures, and consequently would not indirectly result in substantial deterioration of properties or urban decay.
 - This is considered less than significant



Lodi Shopping Center

■ **Summary of Impacts cont.:**

- The project would increase energy consumption in the construction and operational phases of the project.
- Energy conservation measures incorporated into the design, construction and operation of the project would avoid wasteful, inefficient or unnecessary consumption of energy.
- This is considered less than significant
- The increased demand for energy resulting from the project would not be substantial enough to require new or expanded sources of supply or the construction of new or expanded energy delivery systems or infrastructure capacity.
- This is considered less than significant



Lodi Shopping Center

■ **Summary of Impacts cont.:**

- The project would convert approximately 40 acres of prime agricultural land to urban areas.
- No mitigation is available which would reduce this impact to a less than significant level. This is considered a significant impact.
- As a result, the applicant shall obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland within San Joaquin County.



Lodi Shopping Center

■ Use Permit:

- The C-S zoning designation requires all plot plans to be approved by the Planning Commission.
- The plan presented is identical to that approved by the Commission in December, 2004. The plan meets or exceeds all requirements of the Lodi Zoning Ordinance including the Standards for Large Retail Establishments.
- Allows the sale of alcoholic beverages within the Wal-Mart building. The Planning Commission has previously found that the sale of alcoholic beverages is incidental to a grocery store operation and that is what is being requested by the Wal-Mart.

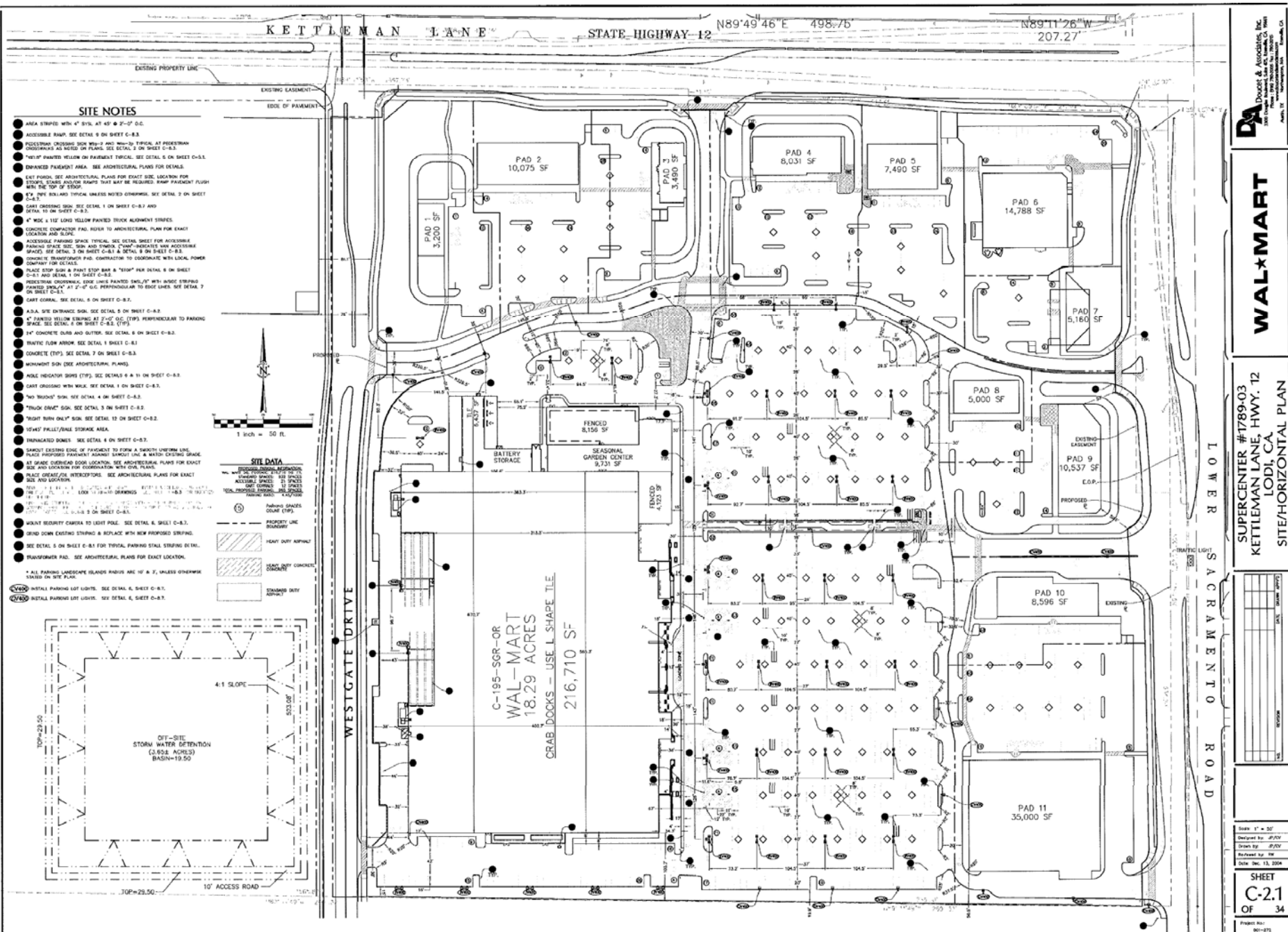
DCA Doucet & Associates, Inc.
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www.doucetandassociates.com
Austin, TX Northampton, MA Roseville, CA

WAL★MART

**SUPERCENTER #1789-03
ETTLEMAN LANE, HWY. 12
LODI, CA
SITE/HORIZONTAL PLAN**

[illegible]

Scale: 1" = 30'
Designed by: JF/CV
Drawn by: JF/CV
Reviewed by: RW
Date: Dec. 13, 2004
SHEET
C-2.1
OF 34
Project No.: 001-272



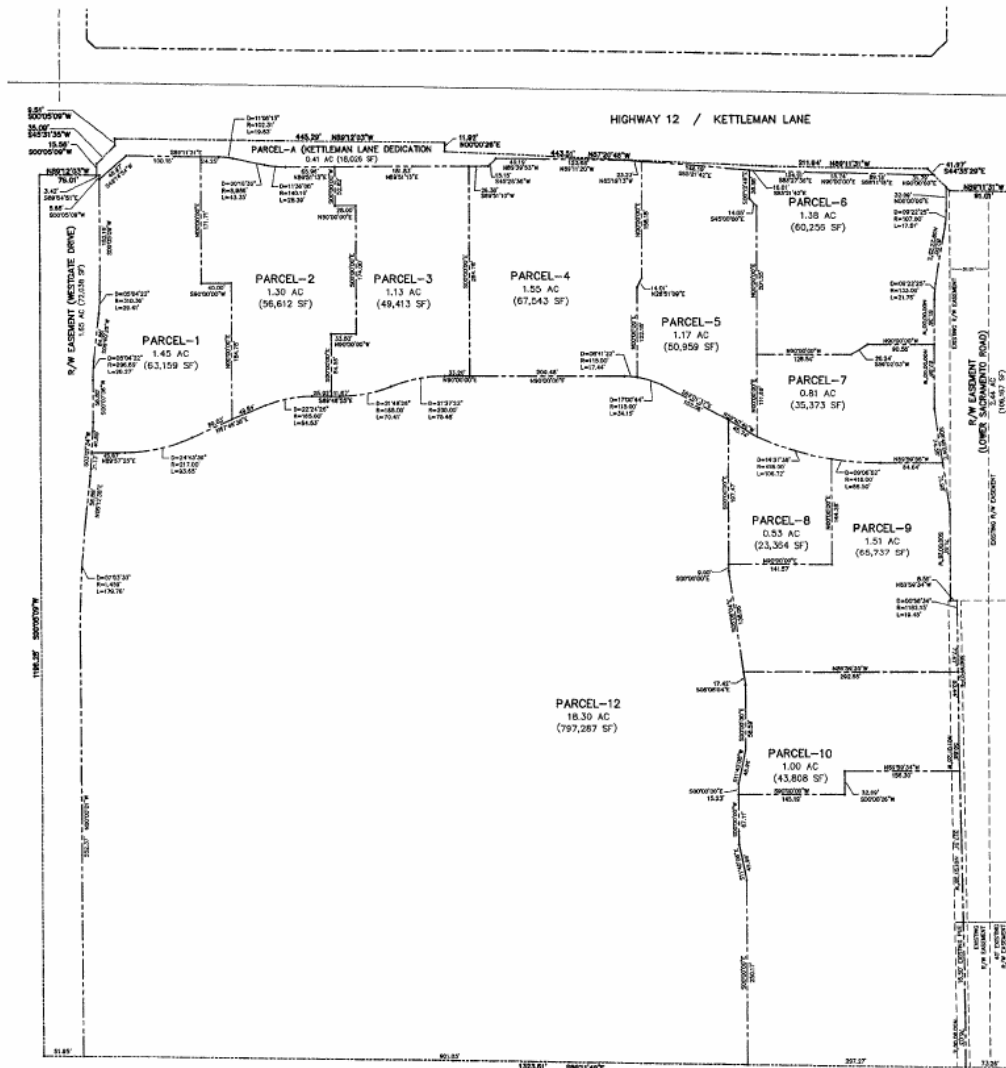


Lodi Shopping Center

- **Tentative Map:**

- The proposed Vesting Tentative Map includes 12 parcels which range in size from the largest lot at 18.3 acres to the smallest at .53 acres.
- All 12 buildings are on their own lot with associated parking.

Lodi Shopping Center: Vesting Tentative Parcel Map



*Vesting Tentative Map
Lot Layout
for
Lodi - III*

APNs: 058-030-01 & 058-030-02
County of San Joaquin, California
August 15, 2008
Sheet 2 of 2



DA Doucet & Associates, Inc.
1611 Crocker-Hughes Drive, Suite 175
Folsom, CA 95630-1755, Phone: (916) 766-0555 Fax: (916) 766-0511
www.doucetandassociates.com



Lodi Shopping Center

■ Site Plan and Architectural Review:

- The proposed project includes the construction of a new Wal-Mart building which is approximately 216,710 square feet. The Wal-Mart building would be located on the southwestern portion of the project site, and the building entrance would face east toward Lower Sacramento Road.
- Architectural materials such as concrete masonry block, metal awnings, and exterior plaster finish will be utilized on the exterior of the building.



Lodi Shopping Center

- **SPARC cont.:**

- There will be three entrances/exits from Lower Sacramento Road, one from Kettleman Lane (Hwy. 12), and two from Westgate Drive.
- The main parking lot is located on the east side of the Wal-Mart building. There will be smaller parking areas to serve the free-standing commercial pads. For the Wal-Mart building, a total of 965 parking spaces are proposed
- The proposed landscape plan calls for various large shade trees, smaller trees, shrubs and ground covers. A total of 478 larger shade trees will be provided within the parking lot interior, along the southern and western edges the property line, and throughout the site. This total number of trees exceeds what the City code requires.

Lodi Shopping Center: Landscape Plan



Lodi Shopping Center: Elevations



EAST ELEVATION



NORTH ELEVATION



WEST ELEVATION



SOUTH ELEVATION

Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations





Lodi Shopping Center

■ **Conclusion:**

- Based on the information contained within the Final Revised EIR, the plans submitted and the policies and previous actions of the City, staff recommends that the Planning Commission:
- Certify Final Revised Environmental Impact Report (EIR-03-01)
- Approve Use Permit U-02-12,
- Approve Vesting Tentative Map 03-P-001
- Approve Site Plan and Architectural Review 08-SP-08

LAW OFFICES OF DONALD B. MOONEY

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October 8, 2008

VIA ELECTRONIC MAIL AND REGULAR MAIL

Planning Commission
City of Lodi
221 West Pine Street
Lodi, California 95241-1910

Re: Final Revisions to the Environmental Impact Report for the Lodi
Shopping Center, State Clearinghouse No. 20030421 13

Dear Commissioners:

At your October 8, 2008 meeting, you will decide whether to (1) certify the City of Lodi's ("City") the Final Environmental Impact Report ("FEIR") for the Lodi Shopping Center project (or the "Project") and (2) approve the Project. On behalf of Citizens for Open Government ("Citizens"), we urge you to send the deficient FEIR back for further work and deny the Project. The two principle questions before you are whether the environmental documentation fully discloses, and mitigates where feasible, the environmental impacts of the Project and whether Lodi needs the Project given the substantial negative impact on local businesses in these lean economic times. We ask the Planning Commission to examine this latter question particularly carefully given that the City's stated objective is to approve only "commercial development which does not negatively affect Downtown and the past and ongoing investment in Downtown." (DREIR at 32.)

A. Background

As you are aware, the Lodi Shopping Center is proposed to be constructed on 40 acres of prime agricultural land on the west side of the City on the southwest corner of West Kettleman Lane and Lower Sacramento Road. The main purpose of the Project is to substitute a new 227,000 square foot Wal-Mart Supercenter for the existing Wal-Mart across the street. The Project also contains approximately 110,000 square feet of additional smaller scale commercial space.

The City considered an EIR for this Project once before and certified it as in full compliance with the California Environmental Quality Act ("CEQA") in early 2005. In litigation commenced by Lodi First, the Superior Court determined that the City made numerous errors in the analysis and remanded the EIR for an overhaul should the City desire to proceed with the Project. Citizens also sued the City over the same EIR,

asserting a range of additional CEQA errors. The Lodi City Council thereafter decertified the Final EIR and voided the project approvals. After prevailing on appeal to establish its right to sue, Citizens agreed to dismiss its case when the City released a Notice of Preparation for the "Draft Revisions" to the EIR ("DREIR") and agreed to permit Citizens to "comment fully" on the new draft EIR. A year ago, the City produced its DREIR and on December 7, 2007, Citizens provided extensive comments. The City produced its "Final Revisions" to the EIR ("FREIR") some six months ago in March 2008.

B. Inadequate CEQA Compliance

1. Improperly Restricted Scope of Analysis

Instead of producing a comprehensive analysis of the full environmental effects of building another 330,000 square feet of new commercial development, the City insists that it may pick and choose which issues to present to you. For example, in response to comments that the City's CEQA documents failed to adequately analyze certain critical environmental effects, (e.g., global warming, certain air quality impacts such as PM2.5 emissions and SJVAPCD 9510 compliance), the City contends that it may ignore these impacts by restricting the scope of its "Revised" EIR. The City contends that it can avoid properly disclosing the full impact of the Wal-Mart Supercenter to the Planning Commission and the public because they were not allegedly addressed by the court in the *Lodi First* litigation or were not voluntarily considered in the DREIR.

The City presumption of its ability to exclude analysis and consideration of environmental impacts caused by the Project exceeds its legal ability and gives short shrift to the Planning Commission's need for complete disclosure of impacts. Under the Stipulation for Dismissal executed by the Citizens and the City, the City agreed that Citizens "shall have the right to comment fully on the revised draft and final EIRs" without limitation. The City then agreed that it would not assert any defense to any subsequent litigation "claims" that is not inconsistent with the terms of this Stipulation" In other words, the City cannot agree on the one hand to allow Citizens to comment fully but on the other hand disregard those comments.

More importantly, the City is asking the Planning Commission to certify that all the environmental documentation before it meets CEQA's obligation to fully disclose all impacts and fully mitigate where feasible. The Planning Commission may examine the FEIR in order to ensure that it discloses and mitigates all impacts regardless of Wal-Mart's desire to shield as much information as possible from public disclosure.

2. Land Use – Urban Decay

In 2005, the City asserted that approval of the Lodi Shopping Center with over 330,000 square feet of commercial/retail would not result in urban decay. The Superior

Court held this conclusion irrational because the City did not consider the cumulative impacts of surrounding commercial development, including new close by Wal-Mart Supercenters. In 2006, the City approved 350,000 square feet of new commercial retail Reynolds Ranch, apparently concluding that this 350,000 square feet would have no adverse affect on downtown retailers. Recently, the City approved more than doubling of commercial area to 750,000 square feet again apparently concluding no adverse consequences from this development.¹ Central to this determination was that the Reynolds Ranch project did not contain any big box stores like a Wal-Mart Supercenter. (See Planning Commission Minutes wherein Mr. Gillespie “stated that because there isn’t any Big Box stores planned for this area the effects on the downtown are not significant.”)j

Now the City asserts that – in addition to the new nearby Wal-Marts and the 750,000 of new commercial of Reynolds Ranch – the Lodi Shopping Center, including a “Big Box” Wal-Mart Supercenter and more than 330,000 square feet will not adversely affect the downtown core notwithstanding a projected 34% loss of sales. We urge the Planning Commission to ask “Is conclusion rational in this economic climate?” We also urge the Planning Commission to review carefully the economic analysis for this report and ask probing questions such as “did the economic analysis include the re-tenanted Wal-Mart space?” and “on what factual basis does the City assume that 100% of sales leakages will be captured by the Project and Reynolds Ranch?” We ask this question because we not only believe this assumption to be unsupported and irrational (particularly 100% of the \$29,229,496 in annual service station leakages), but also because this assumption is used by the economic consultant to reduce on a dollar for dollar basis the effect from the Project on local retailers. In other words, the actual adverse sales impact to existing local businesses will be substantially greater than reported because “using a lower assumed capture rate would raise the percent capture from existing” local retailers. (See DREIR Table 22, at 64, note e.)>

We also ask whether another fundamental assumption central to the consultant’s “no effects” conclusion is rationale: that growth in trade area will expand the economic pie so that the addition of over 1 million square feet of new commercial will keep existing business viable (see e.g., FREIR at 39). Is continued growth sufficient to cover the admitted over supply of retail space objectively reasonable given the economic downturn?

We note that while the City seems institutionally unable to conclude that any new amount of retail will adversely affect downtown, it rests its CEQA conclusion on the absence of urban decay on implementation of the new prioritized code enforcement

¹ In light of the expansion of the Reynolds Project beyond what was disclosed to the public in the DREIR, the City is obligated to recirculate the DREIR in order to provide a meaningful opportunity to comment on Land Use/Urban Decay cumulative impacts and the City’s last minute disclosure of additional consultant analysis.

policy. We attach a copy of Resolution 2006-39 and ask the Planning Commission to note that contrary to its representations in the EIRs, the City has placed enforcement of “[v]iolations related to property maintenance issues” next to the bottom of its “Operational Priorities” (9th out of 10). In addition, while Resolution No. 2006-39 includes abatement of nuisances as a potential topic for one of five “Focused Enforcement Efforts,” we ask for proof in these tight budgetary times that such an effort has actually been funded for the long term, for adopted criteria indicating how much urban decay is necessary before a “nuisance” is established, and instances of past nuisance building prosecutions, if any.

Finally, we note that the proposed adopting ordinance imposes Condition HH “to address the economic affects of the Lodi Shopping Center on the Downtown.” Condition HH requires an investment of not less than \$680,000 in downtown buildings owned or rented by the developer (or by others). It is difficult to reconcile the City’s previous conclusion that development of the Lodi Shopping Center will not adversely affect downtown with the imposition of a condition “to address” those non-existent impacts. More fundamental, however, is the disconnect between substantial loss of sales for existing retailers and the urban decay conditions likely to result there from and Condition HH – which can be satisfied simply by the developer upgrading buildings it owns (which may or may be related to retailing or contributing to urban decay). Has the City undertaken any analysis that links Project impacts to Condition HH or is it simply a monetary sweetener?

2. Agricultural Resources

The City has made significant strides in recognizing that agricultural conservation easements may mitigate loss of prime agricultural lands. We also applaud the City for taking many of our suggestions to improve the easement mitigation requirement imposed on the Project. The City ignored, however, one of our central points – that mitigation should occur at a ratio greater than 1:1 in order to more fully mitigate the loss and that is certainly feasible to do so. In response the City simply points to other jurisdictions that have required minimal mitigation requirements (while other jurisdictions require much more). CEQA, however, does not permit the City to meet some “least common denominator” test to limit its mitigation obligation. If the City desires to override the significant but unavoidable impacts to agricultural resources CEQA requires that it adopt all feasible mitigation measures to reduce significant impacts. (CEQA Guidelines § 15043(a).) In this instance, it is imminently feasible to require greater mitigation ratios in order to lessen the individual and cumulative loss of prime agricultural lands.

3. Energy

As we pointed out in our comments on the DREIR, global warming has become one the most critical environmental problems that humans must confront. Despite discussing global warming in its revised Energy chapter, the City failed to undertake any

analysis of global warming impacts and greenhouse gas (GHG) emissions caused by the Project. The City responded that, even though it raised the global warming issue in the DREIR, it need not discuss it as (1) global warming lies outside the alleged restricted scope of the DRIER, and (2) no meaningful analysis could be undertaken in any event absent more guidance from state government.

The City is wrong. As discussed above, global warming is a legitimate issue raised in timely comments and must be addressed. Moreover, the City cannot raise the issue, inadequately assess its impact, and then claim immunity from comment because global warming lies outside the scope of DREIR.

Next, the City self-servingly asserts that CEQA does not require assessment of global warming impacts until the State if California has provided it with step-by-step guidance on measuring impacts and rendering significance determinations. CEQA's mandate to assess all impacts is not limited to those issues for which a local jurisdiction believe it has sufficient guidance. Instead, as the Governor's Office of Planning and Research ("OPR") has recognized in its June 19, 2008, Technical Advisory entitled *CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review* requires a global warming analysis and that the Energy section of an EIR is an appropriate place for such an analysis. (A copy of the Technical Advisory is attached as Attachment A.) In the Technical Advisory, OPR provides a recommended approach:

Each public agency that is a lead agency for complying with CEQA needs to develop its own approach to performing a climate change analysis for projects that generate GHG emissions. A consistent approach should be applied for the analysis of all such projects, and the analysis must be based on best available information. For these projects, compliance with CEQA entails three basic steps: identify and quantify the GHG emissions; assess the significance of the impact on climate change; and if the impact is found to be significant, identify alternatives and/or mitigation measures that will reduce the impact below significance. (Technical Advisory at p. 5.)

The Technical Advisory also informs lead agencies must assess whether the emissions are individually or cumulatively significant. (*Id.*) Thus, the City must consider the impact of the Project when viewed in connection with the effects of past, current, and probable future projects. (*Id.*)

As indicated in the Technical Advisory (at p. 6), CEQA requires the lead agency must also determine the threshold of significance for the project. It should be noted that the State Lands Commission recently stated in a draft Environmental Impact Report for the Venoco Ellwood Oil Development and Pipeline Project determined that a project would be considered having a significant impact if its GHG emissions have a net increase

over the baseline. Because of the severity of the global warming problem as the result of cumulative GHG emissions worldwide, the State Lands Commission's Draft EIR concludes that the zero-threshold approach appears to be the most scientifically supportable of the options.²

Additionally, there are available mitigation measures that could be incorporated into the project, before it is approved, that could feasibly and substantially reduce the Project's global warming impacts to a level of insignificance. Submitted as Attachment C with this comment letter is the California Air Pollution Control Officer's Association's ("CAPCOA") January 2008 report titled *CEQA & Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act.* Appendix B of this report presents 45 pages of potential mitigation measures that could reduce air quality impacts. Many of which could be incorporated to offset air quality impacts, including GHG emissions.

In sum, in light of the Governor's Executive Order S-3-05 (June 1, 2005) and the requirement that GHG be significantly reduced by 2020 and even further reduced by 2050, it is incomprehensible that the City, a subdivision of the state, has essentially thumbed its nose at the Governor's Executive Order and refused to even attempt to evaluate the Project's GHG emission and contributions to global warming.

4. Alternatives

Has the City presented the Planning Commission with an adequate array of alternatives that meet critical project objectives that offer environmental benefits over the proposed Project; or is the Alternative Analysis simply an exercise in rationalizing the development as proposed by the developer to maximize his fiscal return? We fear the latter as we have consistently pointed out that the City lacked a meaningful set of alternatives. We were encouraged when in the City represented to the public that its consultants would include in the DREIR up to two additional project alternatives. It now appears that one of the alternatives the City expected to include was the Reynolds Ranch site – the same site the City has now approved 750,000 square feet of commercial development. We urge the Planning Commission to require that the City present a meaningful alternative, including redevelopment of the existing Wal-Mart site that not

² The State Lands Commission's Draft Environmental Impact Report is available on line at:

[http://slc.ca.gov/Division Pages/DEPM/DEPM Programs and Reports/Venoco Santa Barbara/Venoco Santa Barbara.html](http://slc.ca.gov/Division%20Pages/DEPM/DEPM%20Programs%20and%20Reports/Venoco%20Santa%20Barbara/Venoco%20Santa%20Barbara.html)

A copy of the Lands Commission's Draft EIR's GHG analysis is Attachment B to these comments.

only will avoid many of the main environmental impacts but also more in line with the objective of avoiding new development harmful to downtown.

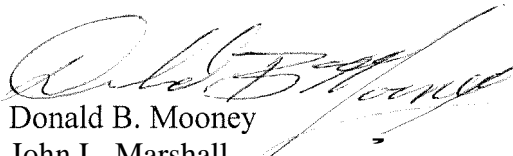
B. Statement of Overriding Considerations

The City proposes to override the significant but unavoidable environmental impacts with a host of unsupported, speculative benefits. Given the projected sales decline of at least 34 percent in the City, and the likely loss of established business, added expense of an alleged stepped up urban decay enforcement, no evidence is presented that actually shows the Project to be a net tax benefit to the City once the true cost of the Project is measured. Without some supporting analysis the City cannot override the adverse environmental consequences.

C. Conclusion

The proposed Lodi Shopping Center is not good planning for a healthy Lodi in these uncertain and tenuous economic times. The City has already approved nearly one million square feet on new commercial space close to the downtown. Why approve even more to drive more existing business down. On behalf of Citizens for Open Government, we urge the Planning Commission to reject the EIR and fundamentally inadequate and deny the Project as simply unwise to undertake at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald B. Mooney", is written over a horizontal line.

Donald B. Mooney

John L. Marshall

Attorneys for Citizens for Open Government

K-3

Randi Johl

From: Blair King
Sent: Wednesday, November 05, 2008 3:02 PM
To: City Council: Bob Johnson - External
cc: Randi Johl; Steve Schwabauer; Rad Bartlam
Subject: Wal-Mart Appeal

Dear Council:

Aaron Rios of Wal-Mart called today and reports that he and Darryl Browman have conflicts the week of November 17th and 24th and request the Council consider scheduling the appeal hearing the weeks of December 8th or 15th.

Blair



***Please immediately confirm receipt
of this fax by calling 333-6702***

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

SUBJECT PUBLIC HEARING TO CONSIDER APPEALS OF BROWMAN
DEVELOPMENT COMPANY AND WAL-MART STORES, INC.
REGARDING THE DECISION OF THE PLANNING COMMISSION TO NOT
CERTIFY THE LODI SHOPPING CENTER ENVIRONMENTAL IMPACT
REPORT

PUBLISH DATE: SATURDAY, NOVEMBER 8, 2008

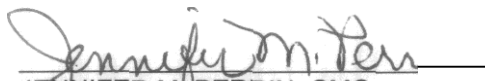
LEGAL AD

TEAR SHEETS WANTED: One (1) please

SEND AFFIDAVIT AND BILL TO: RANDI JOHL, CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: THURSDAY, NOVEMBER 6, 2008

ORDERED BY: RANDI JOHL
CITY CLERK


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

LNS	Faxed to the Sentinel at 369-1084 at _____ (time) on _____ (date) _____ (pages)
	Phoned to confirm receipt of all pages at _____ (time) _____ CM _____ JMP (initials)



DECLARATION OF POSTING

PUBLIC HEARING TO CONSIDER APPEALS OF BROWMAN DEVELOPMENT COMPANY AND WAL-MART STORES, INC. REGARDING THE DECISION OF THE PLANNING COMMISSION TO NOT CERTIFY THE LODI SHOPPING CENTER ENVIRONMENTAL IMPACT REPORT

On Friday, November 7, 2008, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider appeals of Browman Development Company and Wal-Mart Stores, Inc. regarding the decision of the Planning Commission to not certify the Lodi Shopping Center Environmental Impact Report (attached and marked as Exhibit A) was posted at the following locations:

Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 7, 2008, at Lodi, California.

ORDERED BY:

**RANDI JOHL
CITY CLERK**


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



DECLARATION OF MAILING

PUBLIC HEARING TO CONSIDER APPEALS OF BROWMAN DEVELOPMENT COMPANY AND WAL-MART STORES, INC. REGARDING THE DECISION OF THE PLANNING COMMISSION TO NOT CERTIFY THE LODI SHOPPING CENTER ENVIRONMENTAL IMPACT REPORT

On Friday, November 7, 2008, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a Notice of Public Hearing to consider appeals of Browman Development Company and Wal-Mart Stores, Inc. regarding the decision of the Planning Commission to not certify the Lodi Shopping Center Environmental Impact Report, attached hereto marked Exhibit A. The mailing list for said matter is attached hereto marked Exhibit B.

There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 7, 2008, at Lodi, California.

ORDERED BY:

RANDI JOHL
CITY CLERK, CITY OF LODI


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: December 10, 2008

Time: 6:30 p.m.

For information regarding this notice please contact:

Randi Johl

City Clerk

Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, December 10, 2008**, at the hour of 6:30 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider approval of the following item:

- a) Appeals of Browman Development Company and Wal-Mart Stores, Inc. regarding the decision of the Planning Commission to not certify the Lodi Shopping Center Environmental Impact Report.**

Information regarding this item may be obtained in the Community Development Department, 221 West Pine Street, Lodi, (209) 333-6711. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2nd Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

Randi Johl
City Clerk

Dated: November 5, 2008

Approved as to form:

D. Stephen Schwabauer
City Attorney

**APPEALS REGARDING DECISION OF THE PLANNING COMMISSION TO
NOT CERTIFY THE LODI SHOPPING CENTER EIR**

Mailing List

Judy V. Davidoff, Esq.
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111

Andrea K. Leisy, Esq.
Remy Thomas Moose & Manley LLP
455 Capitol Mall, Suite 210
Sacramento, CA 95814

Lodi Shopping Center Public Hearing 300' radius mailing list

APN	OWNER	ADDRESS	CITY	STATE	ZIP
02742001	GEWEKE FAMILY PTP	PO BOX 1210	LODI	CA	95241
02742002	GEWEKE VIII LP	PO BOX 1420	LODI	CA	95241
02742003	IN N OUT BURGERS CORP	13502 HAMBURGER LN	BALDWIN PARK	CA	91706
02742014	GEWEKE VIII LP	PO BOX 1210	LODI	CA	95241
05803003	VAN RUITEN RANCH LTD	PO BOX 520	WOODBIDGE	CA	95258
05803011	BDC LODI III LP	100 SWAN WAY SUITE	OAKLAND	CA	94621
05803012	WAL MART REAL EST BUSINESS TRU	MAIL STOP 0555	BENTONVILLE	AR	72716
05803013	BDC LODI III LP	100 SWAN WAY STE 206	OAKLAND	CA	94621
05814001	TESORO SIERRA PROPERTIES LLC	300 CONCORD PLAZA DR	SAN ANTONIO	TX	78216
05814004	FRAME, DEAN K & SHARON L TR	212 RUTLEDGE DR	LODI	CA	95242
05814006	HERRMANN, CHARLENE K TR ETAL	1200 GLENHURST DR	LODI	CA	95240
05814011	GREVER, ZANE M & PATSY R TR	1432 PARK ST	LODI	CA	95242
05803010	LODI CITY OF	PO BOX 3006	LODI	CA	95241
05814011	GREVER, ZANE M & PATSY R TR	1432 PARK ST	LODI	CA	95242